

No. 11735

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

In the Matter of

CHRIST'S CHURCH OF THE GOLDEN RULE,
a nonprofit California corporation,

Bankrupt.

PAUL W. SAMPSELL, L. BOTELER and McINTYRE FARIES, as successor to Stewart McKee, the duly qualified and acting trustees in bankruptcy of the estate of Christ's Church of the Golden Rule, a nonprofit California corporation, bankrupt, and FRANK C. WELLER, THOMAS S. TOBIN and MARTIN GENDEL,

Appellants.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

NOV 12 1947

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellants:

FRANK C. WELLER

THOMAS S. TOBIN

MARTIN GENDEL

607 James Oviatt Building

617 South Olive Street

Los Angeles 14, Calif. [1*]

*Page number appearing at foot of Certified Transcript.

2 *In the Matter of Christ's Church of the Golden*

In the District Court of the United States for the
Southern District of California

Central Division

In Bankruptcy No. 44,128-WM

In the Matter of

CHRIST'S CHURCH OF THE GOLDEN RULE,
a nonprofit California corporation,

Bankrupt.

SUPPLEMENT TO REFEREE'S CERTIFICATE
ON PETITION FOR REVIEW OF ORDERS
DENYING PETITION OF TRUSTEES FOR
LEAVE TO EMPLOY CERTAIN COUNSEL

To the Honorable William C. Mathes, Judge of the above
entitled Court:

I, Benno M. Brink, one of the Referees in Bankruptcy
of this Court, before whom the above entitled matter is
pending, do hereby supplement my Referee's Certificate
on Petition for Review of Orders Denying Petition of
Trustees for Leave to Employ Certain Counsel, filed by
me in this matter on January 30, 1946, by transmitting
herewith the following papers, to wit:

(a) Original letter addressed to me under date of May
14, 1946, by Robert W. Kenny, Attorney General, by
Gilbert F. Nelson, Deputy Attorney General, together
with the papers described in Paragraphs 1, 2 and 3 of said
letter.

(b) The following papers deposited with me by the said Gilbert F. Nelson on or about May 14, 1946:

Letter from Hotel Stratford dated December 29, 1945, and two blank forms of Proof of Unsecured Debt, to which are attached a notation "Obtained [2] from C. M. Rottmann 3-11-46-N A".

Envelope bearing the return card of Continental Building, Room 801—408 So. Spring Street, Los Angeles 13, California, and addressed to Graham, Reynolds Electric Company, 300 East Third Street, Los Angeles 13, California, which envelope contains two blank forms of Proof of Unsecured Debt.

Letter from Hotel Stratford dated December 29, 1945, to which is attached a notation "Calif. State Hotel Assn. rec Laura Ellis 3-12-46".

Letter from Hotel Stratford dated December 29, 1945, to which is attached a notation "Puro Filter Co 3-12-46- received from Mr. Wolf".

I hereby certify that none of the aforesaid papers was before me or considered by me at the time the orders affected by the aforesaid petition for review were made. I am transmitting the said papers for such consideration, if any, as should be accorded thereto in this matter.

Respectfully submitted this 24th day of May, 1946.

BENNO M. BRINK

Referee in Bankruptcy [3]

Robert W. Kenny
Attorney General

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
Los Angeles 12, California

May 14, 1946

Judge Benno M. Brink
Referee in Bankruptcy
323 Federal Building
Los Angeles 12, California

Dear Judge Brink:

Re: In the Matter of Christ's Church of The
Golden Rule, Bankrupt, No. 44128-WM

Enclosed herewith are certain papers taken from the trustee's files of the books and records of Christ's Church of The Golden Rule, bankrupt. These papers were turned over to us by Mr. Ridgeway of the office of the trustee Paul W. Sampsell. As you will note, each paper bears Mr. Ridgeway's initials.

On the 13th of May, Judge Mathes considered the review of your order disqualifying Craig & Weller as attorneys in the bankrupt estate. The above papers were called to Judge Mathes' attention at that time, and he instructed from the bench that these papers be presented to you for proper action in making them a part of the record in this case. The papers are particularly described as follows:

1. Charge Ticket for Wolcott's forms in the amount of \$15.38 under date of December 1, 1945, ordered

by Miss Grasome, one of the workers in the central office of the bankrupt corporation.

2. Copy of letter under date of December 28, 1945 instructing a check on Oregon creditors re filing of proof of unsecured debt through Los Angeles Board of Trade or Raphael Dechter.
3. List of certain accounts in duplicate with statement re three of the accounts, "a/c turned over to Board of Trade."

A copy of this letter is being sent to Mr. Sampsell for his file in this matter, and an extra copy for your file in event the original will be used in connection with forwarding these matters to the District Court in accordance with his instructions.

Very truly yours,

ROBERT W. KENNY

Attorney General

By Gilbert F. Nelson

Deputy Attorney General

GFN:B

CC: Mr. Sampsell [4]

P-36-B

American Laundry
585 E. Empire St., San Jose
Lee Rowland, Mgr.

O. L. King
436 Clementina St.,
San Francisco, Calif.

Referred to L. A. Office
to contact
Mr. J. A. Brittain, Th 3181
6715 McKinley Ave., L. A. (1)

Patek & Co.
1900 – 16th St.,
San Francisco.

a/c turned over to
Board of Trade

E. S. Browning Co.,
1515 – 3th St.,
San Francisco.

a/c turned over to
Board of Trade

John P. Lynch Co. of S. F.
1166 Howard St.,
San Francisco.

a/c turned over to
Board of Trade

S. L. Abbot Company
135 King St.,
San Francisco.

Granted ~~Power~~ of Attorney
letter

Wyandotte Chemicals
Corp.

Granted Letter of Attorney

J. B. Ford Division,
Mr. S. P. Spencer
870 Market St. (Flood
Bldg.)
San Francisco.

A. L. Hyde
161 Ellis St.,
San Francisco.
26—ERR [5]

Not in – unable to contact.

Ruic, a nonprofit California corporation, etc. 7

214 South Spring Street
Los Angeles 12, Calif.
Michigan 4943

Date 12/1/45
Your No.
Shipped Via taken
Salesman
Terms

Sold To
Miss Grasome

CHARGE TICKET
WOLCOTTS

Established 1893

✓	Amount	Form No.	Items	Remarks
	1M	1890	"Proof of unsecured debt & letter of attorney"	20 00
			Less 25%	5 00
				<hr/> 15 00
			Tax	38
				<hr/> 15 38

Paid Wolcott's HLA

Received Above Merchandise.....

25 ERR [6]

P-36-B
American Laundry
585 E. Empire St., San Jose
Lee Rowland, Mgr.

O. L. King
436 Clementina St.,
San Francisco, Calif.

Referred to L. A. Office
to contact
Mr. J. A. Brittain, Th 3181
6715 McKinley Ave., L. A. (1)

8 *In the Matter of Christ's Church of the Golden*

Patek & Co. 1900 - 16th St., San Francisco.	a/c turned over to Board of Trade
E. S. Browning Co., 1515 -- 3th St., San Francisco.	a/c turned over to Board of Trade
John P. Lynch Co. of S. F. 1166 Howard St., San Francisco.	a/c turned over to Board of Trade
S. L. Abbot Company 135 King St., San Francisco.	Granted Power of Attorney letter
Wyandotte Chemicals Corp. J. B. Ford Division, Mr. S. P. Spencer 870 Market St. (Flood Bldg.) San Francisco.	Granted Letter of Attorney
A. L. Hyde 161 Ellis St., San Francisco.	Not in - unable to contact.

[7]

Dec. 28, 1945

Please check with all of our Oregon creditors to see whether or not they have received a form of Proof of Unsecured Debt and Letter of Attorney and if same has been executed and forwarded to their chosen attorney.

It is our desire that each and every creditor be paid in full. In order that this may be accomplished it is necessary that claims be filed in the above legal manner.

P. S. Creditors are being represented by the Los Angeles Board of Trade and Raphael Dechter (if they do not have their own attorneys).

ERR [8]

Obtained From C. M. Rottman

3-11-46- N W

(1)

Federal 1244

HOTEL STRATFORD

Eighth Street at Hoover

Los Angeles

5

December 29, 1945

Attention: Credit Department

Proof of unsecured debt in the Bankruptcy case of Christ's Church of The Golden Rule -Dba- Hotel Stratford must be filed within three months after December 4, 1945 with Referee Benno Brink, 323 Federal Building.

In order to participate in the election of Trustee for the Bankrupt claims must be filed by January 2, 1945 on which date election takes place in the courtroom of Benno Brink.

The Los Angeles Board of Trade, 704 So. Spring, Trinity 2614 and Rachael Dechter, 417 So. Hill, Trinity 8383 are prepared to handle claims in this matter for any creditors who wish to consult them.

hmb

HOTEL STRATFORD

Claim filed with Bd. Trade (1) [9]

In the District Court of the United States for the
Southern District of California

Central Division

No. 44128 WM: In Bankruptcy

In the Matter of

CHRIST'S CHURCH OF THE GOLDEN RULE

a non-profit California Corporation

Bankrupt or Debtor

PROOF OF UNSECURED DEBT AND
LETTER OF ATTORNEY

.....
Claimant

At, in said.....District
of....., on the.....day of.....,
A. D., 19....., came....., of.....,
in the County of....., and State of.....,
in said District of....., and made oath
and says:

If Individual Omit These Paragraphs
Corporation

That deponent is.....treasurer
of....., a corporation in-
corporated by and under the laws of the State of
.....and carrying on a business
at....., County of.....,
State of....., and that he is duly au-
thorized to make this proof and execute the letter of
attorney incorporated herein and has executed such letter
of attorney on behalf of said corporation.

Partnership

Deponent is a member of the partnership firm of
....., consisting of himself

and....., of.....,
in the County of....., State of
....., and is duly authorized to
execute the letter of attorney incorporated herein, and
has executed the same on behalf of said firm.

Agent

Deponent is the attorney (or authorized agent) of
....., in the County of
....., and State of
..... This deposition can-
not be made by said principal in person because.....

.....
and deponent is duly authorized by his said principal to
make this affidavit, and to execute the letter of attorney
incorporated herein and has executed such letter of at-
torney on behalf of said principal, and it is within his
knowledge that the hereinafter mentioned debt was in-
curred as and for the consideration hereinafter mentioned,
and that such debt, to the best of his knowledge and
belief, still remains unpaid and unsatisfied.

That the above named bankrupt Christ's Church of The
Golden Rule, the person by or against whom a petition
for adjudication of bankruptcy has been filed, was at and
before the filing of said petition and still is justly and
truly indebted to said claimant in the sum of \$.....,
and the nature and consideration of said debt are as fol-
lows: Labor, services, goods, wares and merchandise
sold and delivered within two years last past by the
claimant, an itemized bill of which, marked "Exhibit
A" is hereto annexed, and referred to as a part hereof:

That no part of said debt has been paid, no note has been received for said indebtedness nor for any part thereof, nor has any judgment been rendered thereon, except as hereinabove stated; that there are no setoffs or counterclaims to the same; that the purchase price of said goods, wares and merchandise became due on the dates set out on said itemized bill; and that said claimant has not, nor has any other person by claimant's order, or to the knowledge or belief of deponent, or for claimant, had or received any manner of security whatsoever for said debt. Your claimant avers that every part of the obligation herein sought to be proved is free from usury as defined by the laws of the place where the said debt was contracted.

Said claimant hereby constitutes and appoints.....
.....claimant's true and lawful attorney in fact to represent said claimant in said matter, with full authority to attend the meeting or meetings of creditors of the bankrupt aforesaid at a Court of Bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other time and place as may be appointed by the Court for holding such meeting or meetings, or at which meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for and in the name of the undersigned to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to bankruptcy; and in the choice of trustee or trustees

of the estate of said bankrupt, and for the undersigned to assent to such appointment of trustee, and with like powers to attend and vote in any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due the undersigned under any composition, and for any other purpose whatsoever in the interest of the undersigned, with full power of substitution, and the undersigned does hereby revoke any and all prior powers of attorneys that may have been given by the undersigned.

(Personal signature here only)

Deponent

(Do not sign Firm or
Corporate Name)

Claimant or as such officer, member, agent
or attorney of Claimant.

Mail all Dividends and Notices to
the following address:

Subscribed, sworn to and acknowledged before me
this.....day of....., 19.....

(Place Notarial Seal Here)

Notary Public in and for the County
of Los Angeles, State of
California.

DIRECTIONS

1. Notes and other writings received and copies of invoices must be attached. Mere statements are insufficient, itemized invoices are required.

2. If Claimant Is a Corporation:

- A. If there be a treasurer, he must sign the proof of debt and providing he is within the District where proof of debt is filed.
- B. If the corporation has no treasurer, the officer whose duties correspond most nearly to those of a treasurer must sign for the corporation following a statement to that effect.
- C. If the corporation has a treasurer who is not within the District, however, any officer or agent of the corporation with knowledge of the facts may sign in behalf of the corporation after making a statement to that effect.

3. If claimant is represented by attorney or agent. This proof of debt should not be made by attorney or authorized agent unless absolutely necessary, as sufficient reasons must be given why the proof was not made by the principal, in order to constitute a valid proof of debt.

4. General Directions:

- A. If the consideration is not labor or goods sold and delivered, the true consideration for the debt must be set forth in the blank space provided.
- B. Any exceptions as to payments, judgments, security setoffs or counterclaims with re-

spect to the debt must be set forth in the blank space provided above that statement.

- C. The signature at the bottom of the blank over the line marked "Deponent" must be that of the individual who makes the proof. No corporate, partnership, or principal's name must appear on that line, or the proof will be void.

No. 44128 WM

In the United States District Court
Southern District of California

Central Division

In the Matter of

CHRIST'S CHURCH OF THE GOLDEN RULE

A non-profit California Corporation

Bankrupt.

PROOF OF DEBT DUE

.....
For \$.....
Allowed....., 194.....
for \$.....

.....
Referee in Bankruptcy.

.....
Attorney for Claimant.

Wolcotts Form 1890 [11]

[The second Proof of Unsecured Debt and Letter of Attorney is not reproduced here; it is similar to that set forth on pages 10 to 15.]

[Canceled 3 Cent Stamp]

CONTINENTAL BUILDING

Room 801—408 So. Spring Street

Los Angeles 13, California

[Stamped]: Los Angeles Calif. Dec 28 6 PM 1945

GRAHAM, REYNOLDS ELECTRIC COMPANY

300 EAST THIRD STREET

LOS ANGELES 13, CALIFORNIA [14]

[The two Proofs of Unsecured Debt and Letter of Attorney enclosed in the foregoing envelope are not reproduced here for they are similar to that set forth on pages 10 to 15.]

Puro Filter Co.

3-12-46-

received from Mr. Waly

(6)

FEderal 1244

HOTEL STRATFORD

Eighth Street at Hoover

Los Angeles

5

[Written]: File claim owing prior to Dec. 4. After 12-9 bill Paul Sampsell Bd of Trade Bldg Recv & Trustee Christ Church of Golden Rule

December 29, 1945

Attention: Credit Department

Proof of unsecured debt in the Bankruptcy case of Christ's Church of the Golden Rule -Dba- Hotel Stratford must be filed within three months after December 4, 1945 with Referee Benno Brink, 323 Federal Building.

In order to participate in the election of Trustee for the Bankrupt claims must be filed by January 2, 1945 on which date election takes place in the courtroom of Benno Brink.

The Los Angeles Board of Trade, 704 So. Spring, Trinity 2614 and Rachael Dechter, 417 So. Hill, Trinity 8383 are prepared to handle claims in this matter for any creditors who wish to consult them.

hmb

HOTEL STRATFORD

[Written]: No payt since 9/2/45 1/8/46 Complaint – loose faucet & stopped Stratford Hotel by G. C. Baumas letter acknowledging our property – new contract currently operated (6) [19]

Calif State Hotel Assn
ac – Laura Ellis
3-12-46

(5)

FEderal 1244

HOTEL STRATFORD
Eighth Street at Hoover
Los Angeles
5

December 29, 1945

Attention: Credit Department

Proof of unsecured debt in the Bankruptcy case of Christ's Church of The Golden Rule –DbA– Hotel Stratford must be filed within three months after December 4, 1945 with Referee Benno Brink, 323 Federal Building.

In order to participate in the election of Trustee for the Bankrupt claims must be filed by January 2, 1945 on which date election takes place in the courtroom of Benno Brink.

The Los Angeles Board of Trade, 704 So. Spring, Trinity 2614 and *Rachel* Dechter, 417 So. Hill, Trinity 8393 are prepared to handle claims in this matter for any creditors who wish to consult them.

hmb

HOTEL STRATFORD

[Written]: 1 yrs r. – [illegible] – dated Feb. 27, 1940
[illegible] Hayden Arrowsmith 6460 (5)

[Endorsed]: Filed May 24, 1946. [20]

[Title of District Court and Cause]

REFEREE'S CERTIFICATE ON PETITION FOR
REVIEW OF ORDER UPON PETITION OF
TRUSTEES FOR LEAVE TO EMPLOY CER-
TAIN COUNSEL

To the Honorable William C. Mathes, Judge of the Above
Entitled Court:

I, Benno M. Brink, one of the Referees in Bankruptcy of this Court, before whom the above entitled matter is pending, do hereby certify to the following:

Paul W. Sampsell, L. Boteler and Stewart McKee and Frank C. Weller, of Craig & Weller, Thomas S. Tobin and Martin Gendel have filed in this matter their petition for the review of an order made by your Referee in this proceeding on February 12, 1947, in which he denied the petition of the trustees in this case for leave to employ as their counsel the said Craig & Weller, with whom the said Thomas S. Tobin and Martin Gendel were to be associated.

The said Paul W. Sampsell, L. Boteler and Stewart McKee are the trustees in this matter and the said Frank C. Weller, Thomas S. Tobin and Martin Gendel are intervenors in the particular phase of this proceeding which is involved in this review. The said petition for review was signed on behalf of the said trustees by the [21] said Paul W. Sampsell alone and it was verified by him for and on behalf of his co-trustees. It is assumed that the said Paul W. Sampsell was duly authorized to act in the premises in accordance with the provisions of Section 47(b) of the Bankruptcy Act.

The Proceedings

At the outset of the trusteeship in this matter, in January of 1946, the trustees presented their petition for leave to employ as their counsel two separate law offices, one, Craig & Weller, with whom Thomas S. Tobin and Martin Gendel would be associated, and the other, Irving M. Walker. Your Referee granted the said petition as to Mr. Walker and denied the same as to Craig & Weller and their said associates without prejudice, however, to the right of the trustees to employ other counsel of their own selection, in addition to Mr. Walker, subject only to the approval of the Court. Your Referee's order with respect to Craig & Weller and their said associates was confirmed on review, but on appeal to the Circuit Court of Appeals for the Ninth Circuit, it was reversed and the case was remanded for a hearing on the merits of the trustees' petition for the employment of Craig & Weller and their associates. (C. C. A. 9, 157 Fed. (2d) 910.)

Thereafter, on December 11, 1946, Paul W. Sampsell, one of the trustees, signed and filed a petition in which

it was stated that the trustees prayed for a hearing on their aforesaid petition. Hearings were thereupon had on December 16 and December 20, 1946, and on January 2, 1947. The said hearings having been concluded, your Referee, on February 12, 1947, signed and filed his findings of fact, conclusions of law and order, in which he again denied the said petition of the trustees for leave to employ Craig & Weller and their said associates, but without prejudice to the right of the trustees to employ other counsel of their own selection, in addition to Mr. Walker, subject only to the approval of this Court. It is the said order which is complained of on this review. [22]

The Questions Presented

Section 39(c) of the Bankruptcy Act requires that a petition for review shall set forth "the order complained of and the alleged errors in respect thereto" and Section 39(a) 8 of said Act requires the Referee to include in his certificate on review "a statement of the questions presented".

The alleged errors in respect to your Referee's order are set forth in paragraph VI on pages 3 and 4 of the pending petition for review.

Subparagraph (a) of said paragraph VI presents this question:

Do your Referee's findings of fact sustain his conclusions of law and his order?

Subparagraph (b) of said paragraph VI presents this further question:

Is there any substantial evidence in this matter which would in any manner sustain your Referee's conclusions of law and order?

Subparagraph (c) of said paragraph VI presents the following questions:

(1) Is it a fundamental rule of law that “only in the rarest cases shall the petition for employment by trustees of counsel of their own choice be denied by a Referee in Bankruptcy”?

(2) Does your Referee’s order violate the fundamental rules of law applicable to the situation which is here presented?

Subparagraph (d) of said paragraph VI presents a number of questions. Reference is made therein to “any alleged judicial discretion by the Referee”. (Emphasis added.) This presents the following questions: [23]

(1) Could your Referee exercise judicial discretion in the matter here involved?

(2) If your Referee could exercise judicial discretion, was the order here in controversy a proper exercise of such discretion?

Said subparagraph (d) also states that “The Referee . . . having found that the solicitation by the bankrupt was not in conspiracy with or with the knowledge of the proposed counsel . . .” This presents the following question:

Is the said statement a correct recital of your Referee’s findings of fact, particularly paragraph IX on pages 6 and 7 of said findings?

The said subparagraph (d) likewise states that “The Referee having found . . . that the solicitation by the bankrupt . . . was for the express purpose that the claims ‘. . . would be voted for a trustee or trustees who would be impartial and impersonal and who would

not permit the administration of this estate to be influenced by the Attorney General of the State of California" This presents the following questions:

(1) Is the said statement a correct recital of your Referee's findings of fact, particularly lines 15 and 16 on page 3, lines 4 to 7 inclusive and lines 20 to 26 inclusive on page 4, and lines 2 to 7 inclusive on page 5 of said findings.

(2) Was the solicitation of claims by the bankrupt corporation legitimate and proper in the light of your Referee's findings of fact, particularly paragraphs I, II and III on pages 3 and 4, paragraph V on pages 4 and 5, paragraph VII on pages 5 and 6, paragraphs IX, X and XI on pages 6 and 7 and paragraph XIII on page 8 [24] of said findings.

The Evidence

The evidence in this matter is contained in the following: (1) the trustee's aforesaid petition for the employment of Craig & Weller and their associates, filed January 11, 1946; (2) your Referee's order of January 22, 1946, denying said petition; (3) your Referee's certificate on the review of said order filed January 30, 1946; (4) your Referee's supplement to said certificate on review, filed May 24, 1946; and (5) the reporter's transcripts of the hearings in this matter on December 16 and December 20, 1946, and on January 2, 1947.

All of said evidence is either going up with this certificate or is already in the files in this proceeding in the office of the Clerk of this Court.

Referee's Findings of Fact, Conclusions of Law
and Order

The original of your Referee's findings of fact, conclusions of law and order in this matter is going up with this certificate.

Papers Submitted

For the information of the Court, I hand up the following papers:

1. Petition for Hearing Re: Trustees' Petition to Employ Counsel, filed December 11, 1946.
2. Notice of Continuance of Hearing on Trustee's Petition to Employ Counsel, filed December 17, 1946.
3. Notice of Continuance of Hearing on Trustees' Petition to Employ Counsel, filed December 23, 1947.
4. Findings of Fact, Conclusions of Law and Order Upon Petition of Trustees for Leave to Employ Certain Counsel, filed February 12, 1947.
5. Petition for Review of Referee's Order Denying Right of Trustees to Employ Counsel, February 19, 1947.
6. Reporter's transcript of hearings on December 16 and December 20, 1946. [25]
7. Reporter's transcript of hearing on January 2, 1947.

The following papers are on file in this proceeding in the office of the Clerk of this Court:

1. Voluntary petition in bankruptcy in this matter.
2. Order of adjudication and reference in this matter.

3. Referee's certificate on petition for review of orders denying petition of trustees for leave to employ certain counsel, filed January 30, 1946, to which are attached the trustees' petition for the employment of counsel, filed January 11, 1946, and your Referee's orders of January 14 and January 22, 1946, upon said petition.
4. Supplement to Referee's certificate on petition for review of orders denying petition of trustees for leave to employ certain counsel, filed May 24, 1946.

The remaining papers requested to be certified by the petitioner on review in this matter are purely formal and have no bearing on the questions here presented.

Respectfully submitted this 3rd day of March, 1947.

BENNO M. BRINK

Referee in Bankruptcy

[Endorsed]: Filed Mar. 3, 1947. [26]

[Title of District Court and Cause]

PETITION FOR HEARING RE: TRUSTEES'
PETITION TO EMPLOY COUNSEL

To the Honorable Benno M. Brink, Referee in Bankruptcy:

Come now your petitioners, Paul W. Sampsell, L. Boteler and Stewart McKee, and respectfully represent:

I.

That they are the duly elected, qualified and acting Trustees in the above entitled matter.

II.

That heretofore, they submitted a petition for the employment of Craig & Weller, Thomas S. Tobin and Martin Gendel as their permanent counsel in the within proceedings; that said petition was denied by this Court, by memoranda dated January 14th and January 22nd, 1946; that said order denying the employment of said counsel has been reversed by the Circuit Court of Appeals, and this Court was directed to hear the matter set forth in the petition in open court.

Wherefore, your petitioners pray that this Court set a date certain at which time your petitioners may again present, in open court, their original petition to employ Craig & Weller, [27] Thomas S. Tobin and Martin Gendel as the attorneys for your petitioners, acting in the within bankruptcy proceedings.

Dated this 10th day of December, 1946.

PAUL W. SAMPSELL

L. BOTELER and

STEWART McKEE

By Paul W. Sampsell

Trustees

It is ordered that this trustees' petition to employ counsel, hereinbefore mentioned, be and it hereby is, set for hearing before the undersigned Referee on December 16, 1946 at 2 P. M.

Dated December 11, 1946.

BENNO M. BRINK

Referee in Bankruptcy [28]

[Verified.]

[Endorsed]: Filed Dec. 11, 1946.

[Endorsed]: Filed Mar. 3, 1947. [29]

[Title of District Court and Cause]

NOTICE OF CONTINUANCE OF HEARING ON
TRUSTEES' PETITION TO EMPLOY COUNSEL

To Paul W. Sampsell, Trustee in Bankruptcy, 111 West
7th Street, Los Angeles, California;

To L. Boteler, Trustee in Bankruptcy, 704 S. Spring
Street, Los Angeles, California;

To Stewart McKee, Trustee in Bankruptcy, 650 South
Spring Street, Los Angeles, California:

You and Each of You Will Please Take Notice that
the hearing on the Trustees' Petition to Employ Counsel
in the above entitled matter has been continued from De-
cember 16, 1946, to December 20, 1946, at 2 p. m. in the
courtroom of Referee in Bankruptcy Benno M. Brink, 3rd
Floor Federal Building, Temple and Spring Streets, Los
Angeles, California.

Dated: December 17, 1946.

CRAIG & WELLER
THOMAS S. TOBIN and
MARTIN GENDEL

By Martin Gendel [30]

[Affidavit of Service by Mail.]

[Endorsed]: Filed December 17, 1946.

[Endorsed]: Filed Mar. 3, 1947. [31]

[Title of District Court and Cause]

NOTICE OF CONTINUANCE OF HEARING ON
TRUSTEES' PETITION TO EMPLOY COUNSEL

To Paul W. Sampsell, Trustee in Bankruptcy, 111 W.
7th St., Los Angeles, California;

To L. Boteler, Trustee in Bankruptcy, 704 S. Spring St.,
Los Angeles, California;

To Stewart McKee, Trustee in Bankruptcy, 650 S. Spring
St., Los Angeles, California:

You and Each of You Will Please Take Notice that
the hearing on the Trustees' Petition to Employ Counsel
in the above entitled matter has been continued from
December 20, 1946, at 2 p. m., in the courtroom of
Referee Benno M. Brink, 3rd Floor Federal Building,
Temple and Spring Streets, Los Angeles, California to
January 2, 1947, at the same time and place.

Dated January 20, 1946.

CRAIG & WELLER
THOMAS S. TOBIN and
MARTIN GENDEL
By Martin Gendel [32]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Dec. 23, 1946.

[Endorsed]: Filed Mar. 3, 1947. [33]

[Title of District Court and Cause]

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER UPON PETITION OF TRUS-
TEES FOR LEAVE TO EMPLOY CERTAIN
COUNSEL

On January 11, 1946, Paul W. Sampsell, L. Boteler and Stewart McKee, the trustees in this matter, filed herein their petition for leave to employ Messrs. Craig & Weller and their associates, Thomas S. Tobin and Martin Gendel, as their counsel and also to employ Irving M. Walker as such counsel.

On January 14, 1946, I authorized, by order, the employment of Mr. Walker but deferred formal action on the said petition as to Craig & Weller and their said associates until a later date. On January 22, 1946, I entered an order denying the said petition as to Craig & Weller and their said associates. °

Thereafter, the said trustees duly filed their petition for the review of the said orders of January 14 and January 22, 1946. On January 30, 1946, I filed my Referee's Certificate on review in the matter. At the subsequent hearing on review before the Honorable William C. Mathes, one of the Judges of this Court, Frank C. Weller, of the said firm of Craig & Weller, and the said Thomas [34] S. Tobin and Martin Gendel, with leave of Court, intervened in the matter. Thereafter, on May 13, 1946, the aforesaid order of January 22, 1946, was confirmed by the Judge and on May 24, 1946, I filed a supplement to my aforesaid certificate on review in this matter.

Later, on appeal by the said trustees and the said intervenors, the decision in question was reversed by the Cir-

cuit Court of Appeals and the case remanded for a hearing on the merits of the aforesaid petition of the trustees for the employment of Craig & Weller and their said associates (C. C. A. 9, 157 Fed. (2) 910).

Pursuant to the aforesaid decision on appeal, the trustees, on December 11, 1946, filed a petition for a hearing on their said petition for the employment of the said attorneys and, thereafter, hearings were had in the matter on December 16 and December 20, 1946, and on January 2, 1947.

Mr. Gendel, of the intervenors, participated in all of said hearings; Mr. Weller appeared at one or two of the hearings; Mr. Tobin appeared as a witness at one of the sessions; Mr. Boteler, one of the trustees, appeared at one of the hearings and the other trustees, Mr. Sampsell and Mr. McKee, did not personally participate.

At said hearings, the trustees and the intervenors were afforded an opportunity to be heard and to offer evidence on all the matters and things set forth or contained in the following: (1) the trustees' aforesaid petition for the employment of Craig & Weller and their associates; (2) the Referee's aforesaid order of January 22, 1946; (3) the Referee's aforesaid certificate on review; and (4) the Referee's aforesaid supplement to the certificate on review.

The said hearings were not adversary in character in that no one appeared to object to the employment of Craig & Weller and their associates by the trustees and no evidence was offered in opposition to that produced by or on behalf of the trustees and the intervenors. Consequently, the decision here made is based on the evidence received at the said hearings and on the matters and things [35] set forth or contained in the trustees' petition

for the employment of Craig & Weller and their associates, the Referee's order of January 22, 1946, and the aforesaid certificate on review and the supplement thereto.

The aforesaid hearings having been concluded and the matter having been submitted for decision, I now make the following findings of fact:

FINDINGS OF FACT

I.

I find that the bankrupt corporation was a far flung organization having assets said to be worth some three million dollars and owning and operating various and sundry enterprises in California and Oregon and having approximately eight hundred members or affiliates; that the corporation was organized by its president, Arthur L. Bell, and that it was completely dominated and controlled by him.

II.

I find that on or about October 10, 1945, the Attorney General of the State of California filed an action in the Superior Court of the State of California against the bankrupt corporation, Mr. Bell and others, for an accounting and for the appointment of a receiver pendente lite; that the complaint in said action charged, among other things, that Bell had applied to his own use large sums of money belonging to the corporation, and that later, an amended complaint was filed praying not only for an accounting but also for the dissolution of the corporation.

III.

I find that on or about October 11, 1945, a receiver was appointed in the aforesaid State Court Action; that

Bell was dissatisfied with said receiver and that on November 1, 1945, he caused this case to be commenced in this Court hoping to find here a more favorable atmosphere; that upon the filing of this case, the [36] Attorney General of the State of California objected to this Court's jurisdiction in the matter and that after certain proceedings were had, an order was entered herein on November 19, 1945, adjudging the said corporation a bankrupt; that thereupon Bell determined, if possible, to control the appointment of the trustee or trustees in this matter to the end that the administration of this estate would not be influenced by the said Attorney General.

IV.

I find that for many years the firm of Craig & Weller has represented the Los Angeles Wholesalers Board of Trade, a local mercantile adjustment bureau, in all bankruptcy matters; that claims secured by the Board in bankruptcy cases have invariably been voted by said firm; that Thomas S. Tobin, one of the intervenors, is on the staff of said firm and that Martin Gendel, another intervenor, has associated himself with said firm in this case; that while the said Board of Trade has undergone some sort of reorganization and is now known as the Los Angeles Credit Men's Association, it is still familiarly referred to in bankruptcy circles as the Board of Trade.

V.

I find that Bell was satisfied, from contacts and investigations which he had made, that if claims of creditors in this case were placed in the hands of the Board of Trade or in the hands of Raphael Dechter, a Los Angeles attorney, they would be voted for a trustee or trustees who would be impartial and impersonal and who would not

permit the administration of this estate to be influenced by the Attorney General of the State of California; that the particular Board of Trade which Bell had in mind was the aforesaid entity customarily represented by Craig & Weller and not any other entity with a similar name doing business in the City of Los Angeles; that Bell instructed the members and affiliates of the bankrupt corporation to contact all creditors in the case and to urge them to file their claims and to suggest to them that they place their claims [37] with the Board of Trade or with Raphael Dechter if they did not have attorneys of their own to represent them; that Bell's aforesaid determination to control the appointment of the trustee or trustees in this case was intensified by the fact that he learned that the Attorney General of the State of California was endeavoring to secure claims of creditors for voting purposes in the selection of the trustee or trustees in this matter.

VI.

I find that it has not been shown that at the outset of this case the Board of Trade or Craig and Weller or their associates represented any creditors in this matter; I further find that after the commencement of this proceeding claims of creditors were solicited by or on behalf of the Board of Trade for voting purposes in the selection of the trustee or trustees in this case and that claims were likewise solicited by the Attorney General of the State of California for the same purpose.

I further find that as a result of the aforesaid solicitation, claims were secured by the Board of Trade and were subsequently voted by Craig & Weller and their associates in the selection of the trustees in this matter; I further find that Craig & Weller and their associates had actual

knowledge of the fact that claims in this case were being solicited for voting purposes by or on behalf of the Board of Trade.

VII.

I find that at the first meeting of creditors in this case on December 4, 1945, claims secured by the Board of Trade were voted by Craig & Weller and their associates in the selection of trustees and that at the continued first meeting on January 2nd and January 3rd, 1946, claims secured by the Board of Trade were voted by Craig & Weller and their associates; that claims were also voted by Raphael Dechter, by the Attorney General and by others; that objection was made by the Attorney General to the claims voted by [38] Raphael Dechter upon the ground that the bankrupt had been instrumental in forwarding claims to him; that said objection was sustained and that the claims represented by Raphael Dechter were not allowed to be considered in the selection of the trustees; that it was not disclosed at the first meeting of creditors or at the continued first meeting that Bell had also instructed the members and affiliates of the bankrupt corporation to suggest to creditors that they place their claims with the Board of Trade; that that fact did not come to the attention of the Referee until after the trustees had been appointed and had qualified.

VIII.

I find that at the continued first meeting of creditors on January 2nd and January 3rd, 1946, the creditors whose claims were allowed to be voted divided into two groups; that one group was represented exclusively by the Attorney General; that the other group included the creditors whose claims were voted by Craig & Weller and

their associates; that said last mentioned group was found to have the required majority of all claims which were allowed to be voted and was, therefore, entitled to select the trustees, subject to the approval of the Referee; that after certain proceedings were had, the said last mentioned group voted their claims for the said Paul W. Sampsell, L. Boteler and Stewart McKee and they were thereupon appointed as trustees in the case; that the said trustees could not have been elected without the claims which were secured by the Board of Trade and which were voted by Craig & Weller and their associates for the said trustees.

IX.

I find that Craig & Weller or their associates do not represent any interest adverse to the trustees or this estate; I find, however, that there was a connection between Craig & Weller and their associates on the one hand and the bankrupt corporation on the other, in that even if it was done without the knowledge of [39] the Board of Trade or of Craig & Weller or their associates, the members and affiliates of the bankrupt corporation did, in fact, follow the aforesaid instructions of Mr. Bell and did suggest to creditors in this case, either orally or in writing, that they place their claims with the said Board of Trade for voting purposes in the selection of the trustee or trustees in this case, and, at the same time, the claims of the said creditors were being solicited by or on behalf of the said Board of Trade for such voting purposes, of which fact Craig & Weller and their associates had actual knowledge.

X.

I find that it is a well recognized rule in bankruptcy that the bankrupt and his counsel should refrain from

participating directly or indirectly in the appointment of the trustee or the selection of his attorneys and I further find that it is extremely vital that this rule be followed in this case and that the attorneys for the trustees in this matter be entirely free from any connection, however remote, with the bankrupt or with Mr. Bell for the reason, among other things, that from the very commencement of this proceeding, the bankrupt has contended that, although in bankruptcy, it is a solvent entity and is entitled to be heard on all matters pertaining to the administration of the estate and the liquidation of its assets.

XI.

I find that the trustees in this case are obligated, among other things, to thoroughly investigate the charge made in the aforesaid State Court Action that Mr. Bell applied to his own use large sums of money belonging to the bankrupt corporation, and that, if sufficient evidence is discovered, their attorneys must prosecute the matter with the utmost vigor against Mr. Bell; that, accordingly, it is absolutely indispensable that the attorneys for the trustees be entirely free from even the suggestion or suspicion of collusion with the bankrupt or with Mr. Bell. [40]

XII.

I find that it has long been the custom in this district for a trustee in bankruptcy, everything being equal, to employ as his counsel the attorney who voted him into office; I further find that the reason for the selection by the trustees in this case of Craig & Weller and their associates as their counsel, in addition to Mr. Walker, is the fact that the trustees were elected by the claims voted in their behalf by Craig & Weller and their associates; I further find that experienced and qualified attorneys,

other than Craig & Weller and their associates, were and are available for employment by the trustees.

XIII.

I find and I am satisfied that the employment by the trustees of Craig & Weller and their associates as their counsel would not be to the best interests of this estate for these reasons:

(1) That the employment by the trustees of Craig & Weller and their associates would leave this Court and this estate open to the charge, even if it were unwarranted, that the said attorneys were influenced in the discharge of their duties and responsibilities, to the advantage or benefit of the bankrupt corporation or its president and dominating personality, Mr. Bell, by something which occurred at the time of the appointment of the trustees in this case.

(2) That such charge, if made, even though it proved to be without foundation, would bring into question the fair and impartial administration of this estate and would cast a doubt upon the integrity of this Court. [41]

From the foregoing findings of fact, I arrive at the following conclusions of law:

CONCLUSIONS OF LAW

I conclude that the petition of the trustees for leave to employ Craig & Weller and their associates, as their attorneys, should be denied, without prejudice, however, to the right of the said trustees to employ other counsel of their own selection, in addition to Mr. Walker, subject only to the approval of this Court.

Upon the foregoing findings of fact and conclusions of law, I now make the following order:

ORDER

It is ordered that the petition of Paul W. Sampsell, L. Boteler and Stewart McKee, the trustees in this matter, for leave to employ Messrs. Craig & Weller and their associates, Thomas S. Tobin and Martin Gendel, as their attorneys in this case, be and it hereby is denied, without prejudice, however, to the right of the said trustees to employ other counsel of their own selection, in addition to Irving M. Walker, subject only to the approval of this Court.

Dated: February 12, 1947.

BENNO M. BRINK,
Referee in Bankruptcy.

[Endorsed]: Filed Feb. 12, 1947.

[Endorsed]: Filed Mar. 3, 1947. [42]

[Title of District Court and Cause]

PETITION FOR REVIEW OF REFEREE'S ORDER
DENYING RIGHT OF TRUSTEES TO EM-
PLOY COUNSEL

To the Honorable Benno M. Brink, Referee in Bankruptcy:

Come now your petitioners, Paul W. Sampsell, L. Boteler, Stewart McKee, Frank C. Weller of Craig & Weller, Thomas S. Tobin and Martin Gendel, and respectfully represent as follows:

I.

That Paul W. Sampsell, L. Boteler and Stewart McKee are the duly elected, qualified and acting trustees in

the within bankruptcy proceedings; that on December 20, 1946, this Court reaffirmed the order of Hon. Wm. C. Mathes, Judge of the District Court, dated February 7, 1946, whereby Frank C. Weller, of Craig & Weller, Thomas S. Tobin and Martin Gendel were determined to be parties to the within proceedings.

II.

That on January 11, 1946, Paul W. Sampsell, L. Boteler and Stewart McKee, your petitioners, as trustees in bankruptcy in the above entitled matter, filed a petition with the Referee in charge of this proceedings, Honorable Benno M. Brink, for employment of counsel consisting of Frank C. Weller of Craig & Weller, with whom would be associated Thomas S. Tobin and Martin Gendel and Irving M. [43] Walker, all of Los Angeles, California, to act as attorneys for your petitioners as trustees in the within bankruptcy.

That said petition was accompanied by the affidavit of Frank C. Weller, Thomas S. Tobin, Martin Gendel and Irving M. Walker, stating under oath that they, nor none of them are, or ever have been employed by, or connected with the bankrupt or debtor, or with any other person having an interest adverse to the receivers, trustees, or the creditors, and that they, nor none of them are in any way, either directly or indirectly, under obligation of any kind or description to the debtor, nor have any interest adverse to the trustees herein.

III.

That after the filing of said Petition for Employment of Counsel, which counsel were the unanimous selection of your petitioners as trustees in bankruptcy herein, Honorable Benno M. Brink, Referee in Bankruptcy in charge of this proceeding, on January 14, 1946, rejected the petition

of your trustees in so far as Messrs. Craig & Weller, Thomas S. Tobin and Martin Gendel were concerned, and made and entered an order denying the trustees' petition to employ Craig & Weller and their associates, and reserving jurisdiction to make a further order in connection with the application of said trustees.

IV.

That thereafter, on January 22, 1946, the Referee made a second order supplementing his order of January 14, 1946, and expanding the same, but nevertheless denying your petitioners' petition to employ Messrs. Craig & Weller and their associates as counsel for the trustees herein.

V.

That the trustees named herein duly filed their petition for the review of the said orders of January 14, 1946, and January 22, 1946, and the said orders were affirmed before the said Honorable Wm. C. Mathes, Judge of the within District Court; thereafter, the trustees and their proposed counsel, as appellants in intervention, duly appealed and the matter was heard and reversed by the United States Circuit Court of Appeals, for the Ninth Circuit, and the case was remanded to this court for a judicial hearing on the merits of the original petition of the trustees for the appointment of Frank C. Weller of [44] Craig & Weller, Thomas S. Tobin and Martin Gendel. (C. C. A. 9th, 157 Fed. (2) 910); that pursuant to the aforesaid decision on appeal before the United States Circuit Court of Appeals, the trustees, petitioners herein, on December 11, 1946, filed a petition for a judicial hearing of their original petition for the employment of the said attorneys, and intervening petitioners herein, and thereafter hearings were held before this court on December 16, 1946, December 20, 1946, and on January 2, 1947.

That after the consideration of written and oral testimony the Referee herein did, on the 12th day of February, 1947, sign findings of fact and conclusions of law, and pursuant thereto the following order was entered on the 12th day of February, 1947:

"It is ordered that the petition of Paul W. Sampsell, L. Boteler and Stewart McKee, the trustees in this matter, for leave to employ Messrs. Craig & Weller and their associates, Thomas S. Tobin and Martin Gendel, as their attorneys in this case, be and it hereby is denied, without prejudice, however, to the right of the said trustees to employ other counsel of their own selection, in addition to Irving M. Walker, subject only to the approval of this Court."

VI.

That the aforesaid order of February 12, 1947, is erroneous for the following reasons:

(a) The findings of fact do not sustain the conclusions of law and the aforesaid order;

(b) No substantial evidence was introduced at the time of the hearing nor was found as a finding of fact which would in any manner sustain the conclusions of law and the order of the Referee;

(c) The aforesaid order violates the fundamental rules of law as reiterated by the United States Circuit Court of Appeals, for the Ninth Circuit, in the prior appeal on this matter to the effect that [45] only in the rarest cases shall the petition for employment by trustees of counsel of their own choice be denied by a Referee in Bankruptcy;

(d) The Referee having found that the proposed counsel had no interest adverse to the within estate,

having found that the solicitation by the bankrupt was not in conspiracy with or with the knowledge of the proposed counsel and that the solicitation was for the express purpose that the claims “. . . would be voted for a trustee or trustees who would be impartial and impersonal and who would not permit the administration of this estate to be influenced by the Attorney General of the State of California . . .”, these findings did not justify the exercise of any alleged judicial discretion by the Referee permitting the denial of the petition for employment as filed by the trustees, petitioners herein.

VII.

In connection with the within petition for review your petitioners request that the following documents be certified to the District Judge.

1. Voluntary Petition in Bankruptcy;
2. Order of Adjudication and Reference;
3. Order of January 3, 1946, appointing Paul W. Sampsell, L. Boteler and Stewart McKee as trustees;
4. Order approving bond of trustees;
5. Trustee's petition for employment of counsel Craig & Weller, Thomas S. Tobin, Martin Gendel and Irving M. Walker, together with the affidavits of proposed counsel attached thereto and filed January 11, 1946;
6. Orders dated January 14, 1946, and January 22, 1946, denying trustee's petition to appoint Craig & Weller [46] and their associates as attorneys for the trustees;

7. Petition of your trustees for a hearing on their original petition for the employment of the aforesaid attorneys, dated December 11, 1946;

8. Findings of Fact, conclusions of law and order of the Referee, dated February 12, 1947, denying the petition of trustees to employ the named counsel therein which trustees' petition was filed January 11, 1946, and for the hearing of which petition the further petition was filed by the trustees on December 11, 1946.

Wherefore, your petitioners pray for a review of said order of February 12, 1947, by the Judge of the District Court, and that said order be reversed and that the petition of Paul W. Sampsell, L. Boteler and Stewart McKee for leave to employ Frank C. Weller of Craig & Weller, and their associates, Thomas S. Tobin and Martin Gendel, in addition to Irving M. Walker, as their attorneys in this case, be approved and granted.

PAUL W. SAMPSELL
L. BOTELER &
STEWART MCKEE

By Paul W. Sampsell

Trustees in Bankruptcy, appearing in propria persona

CRAIG & WELLER &
FRANK C. WELLER

By Frank C. Weller

Thomas S. Tobin

Martin Gendel [47]

[Verified.]

[Endorsed]: Filed Feb. 19, 1947.

[Endorsed]: Filed Mar. 3, 1947. [48]

[Title of District Court and Cause]

NOTICE OF HEARING OF PETITION ON RE-
VIEW BY TRUSTEES, ET AL., RE: EM-
PLOYMENT OF COUNSEL

To Paul W. Sampsell, Stewart McKee, L. Boteler, Craig
& Weller, Thomas S. Tobin and Martin Gendel:

You and Each of You will Please Take Notice that
the hearing on the Petition filed by you for review of
the order of February 12, 1947, of Referee Brink, deny-
ing the right of the Trustees to employ certain counsel
will be heard before the Hon. William D. Mathes, in his
courtroom on the 2nd floor of the Federal Building, Los
Angeles, California, said hearing to be held on the 24th
day of March, 1947, at the hour of 10 o'clock a. m., or
as soon thereafter as counsel can be heard.

Dated this 10th day of March, 1947.

MARTIN GENDEL

Of Counsel for Petitioners

[Endorsed]: Filed Mar. 10, 1947. [49]

In the District Court of the United States
Southern District of California
Central Division

In Bankruptcy No. 44,128-WM

In the Matter of

CHRIST'S CHURCH OF THE GOLDEN RULE,
a non-profit California corporation,

Bankrupt.

ORDER OF JUDGE ON PETITION FOR REVIEW
OF REFEREE'S ORDER OF FEBRUARY 12,
1947

Upon the petition for review of the trustees filed February 19, 1947; and upon the certificate of Referee Benno M. Brink filed March 3, 1947; and upon the proceedings had before the Referee as appears from his certificate; and upon hearing the interveners Frank C. Weller, Thomas S. Tobin and Martin Gendel, appearing by Martin Gendel, Esquire, the petitioners not appearing, and no one appearing as adversary to the petition for review;

It Is Ordered that the order of the Referee dated February 12, 1947, denying the ex parte petition of the trustees for leave to employ Frank C. Weller, Thomas S. Tobin and Martin Gendel as counsel for the trustees be and is hereby reversed and set aside, and that the Referee's findings of fact and conclusions of law on said petition be and are hereby vacated and set aside; and the matter is hereby recommitted [50] to the Referee with directions

(1) to hold further hearing on the petition of the trustees filed January 11, 1946, for leave to employ Frank C. Weller [Craig & Weller], Thomas S. Tobin and Martin Gendel as counsel;

(2) to hear all competent, relevant and material evidence which, after due notice of the time and place fixed for the hearing, may be adduced at such hearing in support of or in opposition to said ex parte petition of the trustees for leave to employ certain counsel [cf. Appeal of Sampsell, et al., 157 F. (2d) 910, 911 (C. C. A. 9th, 1946)];

(3) From all the evidence adduced, including matters judicially noticed, to make written findings of fact and conclusions of law specifying, among other things,

(a) whether the trustees, and each of them, now ask that their petition filed January 11, 1946, for leave to employ Frank C. Weller [Craig & Weller], Thomas S. Tobin and Martin Gendel as counsel be granted;

(b) whether the verified petition of the trustees seeking leave to employ the interveners Frank C. Weller, Thomas S. Tobin and Martin Gendel states "the reasons for [their] selection," as required by General Order 44 [11 U. S. C. foll. § 53, p. 109];

(c) whether the trustees, or any of them, directly or indirectly in any way or manner, agreed or arranged to employ Frank C. Weller and Thomas S. Tobin and Martin Gendel, or any of them, as counsel for one or more of the trustees prior to the final voting of the creditors' claims represented by the interveners, or one or more of them, upon the [51] election of trustees;

(d) whether one of the reasons for the selection of the interveners, or any one or more of them, as counsel is the fact that the interveners represented creditors' claims aggregating a majority in number

and amount, and voted such claims at the election of trustees in favor of the petitioners, or any of them;

(e) whether any of the creditors who are represented by the interveners in this proceeding had ever been represented by the interveners, or any of them, prior to the date of filing of the original petition herein on November 1, 1945;

(f) whether the bankrupt is the alter ego of Arthur L. Bell;

(g) whether the bankrupt or Arthur L. Bell, or any of the attorneys for either of them, directly or indirectly in any way or manner, solicited any creditor to appoint the interveners, or any of them, as attorney for such creditor in this bankruptcy proceeding, and if so, state the names of such creditors, the nature and amount and date of verification and date of filing of their claims, and in what manner the appointment of the interveners, or any of them, to represent such creditor was brought about;

(h) whether the interveners and each of them have, since the commencement of these proceedings, had no "connection whatsoever with the bankrupt" as alleged in the petition of the trustees, and if that allegation be untrue, what the facts are on the subject; [52]

(i) whether at the time of filing of the "Trustees' Petition for Authority to Employ Counsel," dated January 11, 1946, the interveners, and each of them, "were not under any obligation whatsoever to said bankrupt" as alleged in the petition of the trustees, and if that allegation be untrue, what the facts are on the subject;

(j) whether the trustees' petition states "all of the . . . connections [of Frank C. Weller, Thomas S. Tobin and Martin Gendel, and each of them] with the bankrupt . . . the creditors . . . and their respective attorneys," as required by General Order 44, and if not, what the facts are on the subject;

(k) whether since the commencement of these proceedings on November 1, 1945, any "connections", within the meaning of General Order 44, have existed between the interveners Frank C. Weller, Thomas S. Tobin and Martin Gendel, or any of them, and any of the attorneys for the bankrupt, or "the creditors or any other party in interest," and if so, what the facts are on the subject;

(l) whether the interests of each of the creditors represented by the interveners, or any of them, in this proceeding "are identical with those of your petitioners [the trustees]" as alleged in the petition of the trustees, and if that allegation be untrue, what the facts are on the subject;

(m) whether the representation by the interveners, or one or more of them, of "a number of unsecured creditors" would or might constitute a representation of any interest adverse to the [53] trustees or the estate within the meaning of General Order 44, and if so, what the facts are on the subject;

(n) whether the bankrupt or any of its attorneys, or any other person, furnished the interveners, or any of them, or any client of the interveners, or any of them, with a list of all or part of the creditors of the bankrupt [see exhibit in file: Letter of Board

of Trade of San Francisco, dated December 26, 1945], and if so, what the facts are on the subject;

(o) whether the interveners, or any of them, or any client of the interveners, or any of them, advanced expenses for the solicitation of claims or purchased claims to be represented by the interveners, or any of them, and if so, what the facts are on the subject;

(p) whether, if any client of any of the interveners has advanced funds for the benefit of said attorneys, there is any agreement or arrangement to reimburse such client, directly or indirectly in any way or manner, out of fees or expenses which might be allowed the interveners if appointed counsel for the trustees herein or otherwise, and if so, what the facts are on the subject;

(q) whether, if the bankrupt solicited or caused to be solicited claims voted by the interveners or any of them, such solicitation was done upon the understanding or arrangement, directly or indirectly in any way or manner, that such claims would be voted for trustees who would act favorably toward the bankrupt and Arthur L. Bell and the [54] attorneys for the bankrupt and Arthur L. Bell, or any of them, and if so, what the facts are on the subject;

(r) whether, if the bankrupt solicited or caused to be solicited claims voted by the interveners, or any of them, such solicitation was known to the interveners, or any of them, prior to the voting of such claims for the election of trustees herein, and if so, what the facts are on the subject;

(s) whether the attorneys for the bankrupt, or any of them, did participate directly or indirectly in any way or manner, in the appointment of the trustees or in the selection of attorneys for the trustees, and if so, what the facts are on the subject;

(t) what is the "something which occurred at the time of the appointment of the trustees in this case" to which the Referee refers at page 8, lines 23-24 [Par. XIII (1) of the findings of fact dated February 12, 1947;

(u) if any of the facts found are not based upon evidence adduced at hearings on the petition, but are judicially noticed, state the facts of which judicial notice is taken and the source of judicial knowledge of each such fact [cf. *National Fire Ins. Co. v. Thompson*, 281 U. S. 331, 336 (1930); *Freshman v. Atkins*, 269 U. S. 121, 124 (1925); *McLeod v. Boone*, 91 F. (2d) 71 (C. C. A. 9th, 1937)]; and

(4) enter an appropriate order predicated upon such findings of fact and conclusions of law; and [55]

It Is Further Ordered that the Clerk this day forward copies of this order by United States mail to

- (1) Referee Benno M. Brink;
- (2) The attorneys for the Trustees; and
- (3) The Intervenors.

July 11, 1947.

WM. C. MATHES

United States District Judge

Judgment entered Jul. 11, 1947. Docketed Jul. 11, 1947. Book 11, page 20. Edmund L. Smith, Clerk; by Theodore Hocke, Deputy.

[Endorsed]: Filed Jul. 11, 1947. [56]

[Title of District Court and Cause]

NOTICE OF APPEAL

To the Honorable Wm. C. Mathes, Judge of the Above
Entitled Court;

To the Honorable Benno M. Brink, Referee in Bank-
ruptcy of the Above Entitled Court; and,

To Edmund L. Smith, Esq., Clerk of Said Court:

You and Each of You Will Please Take Notice, and
Notice Is Hereby Given, that Paul W. Sampsell, L.
Boteler, and McIntyre Faries, as successor to Stewart
McKee, the duly qualified and acting trustees in bank-
ruptcy in the above named bankruptcy proceeding, and
Frank C. Weller, Thomas S. Tobin, and Martin Gendel,
duly authorized interveners, and each of them, hereby
appeal to the United States Circuit Court of Appeals
for the Ninth Circuit, from that order, final judgment
and decree entitled "Order of Judge on Petition for Re-
view of Referee's Order of February 12, 1947" filed,
docketed and entered in the above entitled matter on the
11th day of July, 1947.

Dated: August 18th, 1947.

FRANK C. WELLER
THOMAS S. TOBIN
MARTIN GENDEL

By Martin Gendel
Attorneys for Appellants

[Endorsed]: Filed Aug. 19, 1947. [57]

[Title of District Court and Cause]

APPELLANTS' STATEMENT OF POINTS ON
APPEAL

To the Honorable the United States Circuit Court of
Appeals for the Ninth Circuit, and to the Above En-
titled Court:

Come now the appellants Paul W. Sampsell, L. Boteler and McIntyre Faries as successor to Stewart McKee, the duly qualified and acting trustees in bankruptcy in the above named bankruptcy proceeding, and Frank C. Weller, Thomas S. Tobin and Martin Gendel, duly authorized interveners in said proceedings, and state that the points on which they intend to rely on the appeal in this proceeding are as follows:

1. The "Order of the Judge on Petition for Review of Referee's Order" for leave to employ certain counsel, is erroneous in that there were no facts before the Referee or the District Judge which would in anywise justify the exercise of any possible judicial discretion to deny to the trustees in the within bankruptcy proceeding the right to employ qualified counsel of their own choice, where employment of counsel by said trustees was proper.

2. Said order is erroneous in that a referee in bankruptcy has no right to refuse to authorize trustees in bankruptcy to employ qualified counsel of their own choice when employment by said trustees is otherwise proper, unless facts, recognizable at a judicial hearing [58] showing grave disqualifications of such counsel, and limited

only to the rarest cases, are presented to the referee and are properly findings of fact in support of such an order.

3. That the order of the District Judge from which the within review is taken is erroneous for the reason that the matters involved before the District Judge and the Referee unreasonably delay the expressed desire of the trustees in the instant bankruptcy case to employ and use the counsel of their original choice, as reflected by their petition of January 11, 1946, rather than to continue to be compelled to use interim counsel; admittedly the administration of the instant case, from its inception, has required active and vigorous participation by the attorneys for the trustees; in view of the fact that considerable delay had been incurred by the present appellants being required to take the first appeal in this matter to this Honorable Court, and that further delay had been incurred by reason of the necessity for the hearing occasioned by the order of this Honorable Court (Appeal of Sampsell et al., C. C. A. 9th, 1946 (157 Fed. 2d 910)) in reversing the original orders of the Referee and District Judge in this matter, it would appear that said District Judge could have conducted such judicial deliberations in the form of hearing further evidence if he deemed it necessary to enlarge upon the findings of fact as theretofore submitted to him by the Referee in Bankruptcy, rather than to re-refer the matters of inquiry to the Referee. It is the position of the appellants, predicated upon the evidence and the findings of fact submitted by the Referee in Bankruptcy in support of his order of February 12, 1947, that the sole judicial discretion exercisable by the District Judge was, and is, to grant the petition for review by appellants, and to reverse the order of the Referee. [59]

4. That the order of the District Judge of July 11, 1947, was erroneous for the reason that it failed to contain therein findings of fact and conclusions of law supporting the position of the District Judge in refusing to grant the petition on review of the trustees and reversing the order of the Referee dated February 12, 1947.

5. That the order of the District Judge dated July 11, 1947, was erroneous in that it not only disregarded the law of the case binding the aforesaid District Court and the Referee in Bankruptcy arising by virtue of the judgment of this Court made and entered in the appeal of Sampsell et al. (C. C. A. 9th, 1946), 157 Fed. (2d) 910, but, also, that as to all pertinent inquiries which could concern the order made by the Referee on February 12, 1947, the aforesaid District Judge had before him all of the evidence and the findings of fact of the said Referee, which evidence and findings of fact unequivocally demonstrated that this was not a case in which the Referee could exercise his judicial discretion and deny the appointment of counsel as requested by the trustees in their original petition filed January 11, 1946; that the aforesaid order of the District Judge dated July 11, 1947, is erroneous for the reason that the 21 items to which the said court directs the attention of the Referee in Bankruptcy under sub-division 3 of said order are either covered in the evidence and findings of fact as submitted to the aforesaid District Judge, or are not matters which are properly to be considered by the Referee or District Judge in considering the original petition for leave to employ counsel as filed by the trustees in this proceeding. As an example of the statement of this point on appeal, your appellants respectfully direct the attention of this court to [60] item No. 3-a contained in the order of the

District Judge; in answer to this inquiry of the District Judge, the aforesaid Judge had before him a written and verified petition for hearing signed by the trustees in bankruptcy requesting the Referee to grant their original petition of January 11, 1946, and filed with the Referee after this Honorable Court had reversed the order of May 10, 1946, made and entered by this District Judge; in addition thereto the District Judge had before him the petition for review, likewise verified by the trustees in bankruptcy; how can the District Judge with propriety inquire as to whether or not the trustees ask that their petition filed January 11, 1946, be granted?

In subdivision 3-b the District Judge questions whether or not the verified petition of the trustees qualifies with the requirements of General Order 44, and this inquiry is made directly in the face of the judgment of this Court entered in the appeal of Sampsell et al. (C. C. A. 9th, 1946), 157 Fed. (2d) 910, wherein this Honorable Court stated as follows:

“. . . Every requirement of General Order 44 is fully satisfied by the allegations of the petition. . . .”

As a further example of the errors of the District Judge, we find, in paragraph “f” of subdivision 3, that the District Judge desires the Referee to make a finding as to whether or not the bankrupt is the alter ego of Arthur L. Bell. In view of the fact that the appellants have not challenged the finding of the Referee to the effect that Arthur L. Bell controlled and directed the bankrupt corporation, how [61] can we possibly be concerned with a collateral determination of a matter which might take many weeks of evidence to determine?

6. Said order is erroneous in that it deprives the trustees in bankruptcy of the right to select counsel of their own choice and it deprives the appellants in intervention of the right to follow their profession, all without due process of law, because of the lower Courts' undue and unjustifiable delay in the determination of the original petition for leave to employ counsel by the trustee.

Dated: August 18, 1947.

FRANK C. WELLER
THOMAS S. TOBIN
MARTIN GENDEL

By Martin Gendel
Attorneys for Appellants

[Endorsed]: Filed Aug. 19, 1947. [62]

[Title of District Court and Cause]

CONCISE STATEMENT OF POINTS ON APPEAL
AND DESIGNATION OF RECORD NECES-
SARY FOR CONSIDERATION THEREOF AND
TO BE PRINTED

To the Honorable William C. Mathes, Judge of the Above
Entitled Court:

For their concise statement of points on appeal on which the appellants intend to rely, the appellants, and each of them, adopt the statement of points filed with the Clerk of the District Court of the United States, Southern District of California, Central Division.

The appellants do hereby designate and adopt the statement of points as their assignments of errors.

1. The appellants do hereby designate the original transcript of record in case No. 11370 in the United States Circuit Court of Appeals, for the Ninth Circuit, in the matter of Christ's Church of the Golden Rule, a non-profit California corporation, involving the appeal of Paul W. Sampsell, et al., as part of the within record, by reference, and not to be reprinted, pursuant to the order of said Circuit Court of Appeals made August 22, 1947, in this appeal. [63]

* * * * * * * *

Dated: Aug. 26, 1947.

FRANK C. WELLER,
THOMAS S. TOBIN and
MARTIN GENDEL,

By Martin Gendel,
Attorneys for Appellants

[Endorsed]: Filed Aug. 26, 1947. [65]

[Title of District Court and Cause]

PETITION AND ORDER RE: USE OF ORIGINAL
TRANSCRIPTS

To the Hon. Wm. C. Mathes, Judge of the District Court:
Comes now your petitioner Martin Gendel, and respectfully represents as follows:

I.

That he is one of the appellants, and likewise, one of counsel for appellants in the within proceedings on appeal from the order of this court entered on July 11, 1947

II.

That as a part of the record designated to be presented before the 9th Circuit Court of Appeals, appellants have designated two volumes of transcript of testimony taken before Hon. Benno M. Brink, Referee in Bankruptcy, and bearing dates of December 16, 1946, December 20, 1946 and January 2, 1947, said testimony having been transcribed by the court reporter; the original of which transcripts are now on file with the Clerk of this court; that appellants are desirous of having the aforesaid original transcripts forwarded to the Ninth Circuit Court of Appeals in order that the record may be printed therefrom rather than submit to the clerk of the court [66] the sole copies of the transcript which are now in the possession of your appellants since it is necessary for your appellants to use the aforesaid copies in preparing the briefs on appeal.

Therefore, your petitioner prays that this court make an order directing the Clerk of this Court to forward the original transcripts designated above to the 9th Circuit Court of *Appeal* to be used for printing the record, rather than to forward copies thereof.

Dated this 11th day of September, 1947.

MARTIN GENDEL,
Petitioner.

It Is So Ordered:
September 11th, 1947.

PAUL J. McCORMICK,
Judge of the District Court.

[Verified.]

[Endorsed]: Filed Sept. 11, 1947. [67]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 68 inclusive contain full, true and correct copies of Supplement to Referee's Certificate on Petition for Review of Orders Denying Petition of Trustees for Leave to Employ Certain Counsel with the documents annexed thereto; Referee's Certificate on Petition for Review of Order Upon Petition of Trustees for Leave to Employ Certain Counsel; Petition for Hearing re Trustees' Petition to Employ Counsel; Notice of Continuance of Hearing on Trustees' Petition to Employ Counsel filed Dec. 17, 1946; Notice of Continuance of Hearing on Trustees' Petition to Employ Counsel filed Dec. 23, 1946; Findings of Fact, Conclusions of Law and Order Upon Petition of Trustees for Leave to Employ Certain Counsel; Petition for Review of Referee's Order Denying Right of Trustees to Employ Counsel; Notice of Hearing of Petition on Review by Trustees et al re Employment of Counsel; Order of Judge on Petition for Review of Referee's Order of February 12, 1947; Notice of Appeal; Appellants' Statement of Points on Appeal; Designation of Record and Petition and Order re Use of Original Transcripts which, together with the Transcript of Record in case No. 11370 in the United States Circuit Court of Appeals for the Ninth Circuit and Original Reporter's

Transcript of Hearings on December 16 and 20, 1946 and January 2, 1947, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$16.55 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 22 day of September, A. D. 1947.

EDMUND L. SMITH,

Clerk

By Theodore Hocke,

Chief Deputy Clerk

[Title of District Court and Cause]

Before Hon. Benno M. Brink, Referee in Bankruptcy.

HEARING ON PETITION TO EMPLOY COUNSEL

Appearances:

For the Petitioners: Martin Gendel, Esq., and Frank M. Chichester, Esq., 607 James Oviatt Building, 617 South Olive Street, Los Angeles, California. TRinity 2346.

Frank C. Weller, Esq., and Thomas S. Tobin, Esq., by Frank C. Weller, Esq., Room 817, 111 West 7th Street, Los Angeles, California. TRinity 5531.

Los Angeles, California, Monday, December 16, 1946,
2:00 p. m.

The Referee: Christ's Church of the Golden Rule.

Mr. Gendel: Ready for the Petitioners, your Honor.

The Referee: This is the further hearing on the Petition to Employ Counsel, which is the Petition that was filed January 11, 1946. All right, let the record show the attendance of whoever may be here—Mr. Gendel, Mr. Weller, Mr. Chichester.

Are the Trustees going to appear?

Mr. Hunt: Your Honor, I just came by; just happened to be in the building.

Mr. Gendel: Mr. Hunt is a spectator.

The Referee: Have the Trustees had notice of this hearing, does any one know?

Mr. Gendel: Your Honor, the Trustees are in this position, as I understand it from talking to them: Mr. Sampsell is up North working on some matters in connection with Christ's Church of the Golden Rule. I just

spoke a few minutes before court time to Mr. Boteler. As your Honor knows, it was switched over to yourself to determine whether or not his presence would be necessary, our position being that they had presented a written, verified Petition for Employment, and that that was their prima facie case, and that that is what they intended to submit to the Court. [3*] Unless there were something to contradict the allegations in the Petition, it is their position as well as ours that the Petition is in the form required under General Order in Bankruptcy No. 44 and provisions of the Federal Bankruptcy Act applicable thereto, and that, in accordance with the authorities that apply, unless, as is indicated by the leading case, in the rarest of instances there is some judicial or legal ground of disqualification, the Petition is to be granted. Now if your Honor desires the personal presence of a Trustee or Trustees to support that position—

The Referee (Interrupting): Where is the decision of the Ninth Circuit? Does anybody have it?

Mr. Gendel: I have a copy of it, your Honor.

The Referee: Let me see it, please.

(Mr. Gendel hands a paper to the Court.)

Mr. Gendel: You will note that there is an inked indication there of a correction of a citation. That was given to me by the Clerk of the Circuit Court. He had inadvertently cited the case of *In Re Rury* when they meant *Kanter versus Robertson*.

The Referee: Well, the Circuit Court of Appeals of the Ninth Circuit, in the case of *Christ's Church of the Golden Rule*, in a proceeding in which Mr. Sampsell and Mr. Boteler and Mr. McKee, as Trustees in Bankruptcy

*Page number appearing at top of page of original Reporter's Transcript.

of Christ's Church of the Golden Rule, and Frank C. Weller, Thomas S. Tobin, and Martin Gendel were appellants on November 15, 1946, [4] reversed an Order made by Judge Mathes and remanded the case for a hearing on the merits of the Petition for Employment of Attorneys.

(Reading)

"This is an appeal from an order of the district court in the above bankruptcy proceeding confirming the denial by the referee of the petition of the above trustees for the employment of certain persons as their attorneys. The ground of the appeal is the claim that, without hearing on the petition, which satisfied all the requirements of General Order in Bankruptcy No. 44, the referee denied the employment of the attorneys by the trustees.

"We think the court and referee erred in proceeding *ex parte* and in not having a hearing on the petition. General Order 44 provides

"'No attorney for a receiver, trustee or debtor in possession shall be appointed except upon the order of the court, which shall be granted only upon the verified petition of the receiver, trustee or debtor in possession, stating the name of the counsel whom he wishes to employ, the reasons for his selection, the professional services he is to render, the necessity for employing counsel at all, and to the best of [5] the petitioner's knowledge all of the attorney's connection with the bankrupt or debtor, the creditors or any other party in interest, and their respective attorneys. If satisfied that the attorney represents no interest adverse to the receiver, the trustee, or the estate in

the matters upon which he is to be engaged, and that his employment would be to the best interests of the estate, the court may authorize his employment, and such employment shall be for specific purposes unless the court is satisfied that the case is one justifying a general retainer . . . ' (Emphasis supplied.)

"An inspection of the trustees' verified petition shows that it stated the complicated character of the trustees' anticipated litigation, creating a special need of counsel for the successful discharge of the trustee obligation. Every requirement of General Order 44 is fully satisfied by the allegations of the petition. As was stated by the Second Circuit with reference to General Order 44 In the Matter of Mandel, 69 Federal 2d, 830,

"'Only in the rarest cases should the trustee be deprived of the privilege of selecting his own counsel, and the reasons which make it for [6] the best interest of the estate to have the court select the attorney over the trustee's objections should appear in the record.'"

Of course that case is not applicable, gentlemen, as you will note in that case the Court selected the attorney over the Referee's objections.

(Reading)

"The Fourth Circuit in Kanter versus Robertson, 102 Federal (2d) 92, 93, stated of the relations between the trustee and his attorney

"'. . . Ordinarily the choice of an attorney for the Trustee rests with the Trustee subject to the approval or disapproval of the referee or judge, and

the choice of the trustee should be confirmed unless good reasons appear to the contrary.'

"The reasons of the referee 'to the contrary' were arrived at by an ex parte process of which the trustees had no knowledge until the order was entered. Thus the referee frustrated the first choice of the trustees for their attorneys for the important and difficult work before them.

"The referee frankly says he makes no findings of fact on the allegations of the petition because the proceeding is ex parte. He states he was in receipt of certain communications which raised a [7] question in his mind as to whether the proposed attorneys might have an interest which would disqualify them. We think that under General Order 44 the petitioning trustees are entitled to a hearing on their petition for a judicial deliberation on the matters the referee has in mind.

"The trustees ask us to pass on the sufficiency of the matters outlined but not found in the referee's report to warrant a refusal to permit the employment of the proposed attorneys. This would be futile for we do not know what importance they may have as the issue is developed at the hearing.

"The order appealed from is reversed and the case remanded for a hearing on the merits of the petition for the employment of the attorneys."

Gentlemen, the Trustees have asked the Circuit Court to rule that they are entitled to a hearing; and, upon the Petition filed by the Trustees the Referee now has set this date for a hearing. You gentlemen may proceed.

Now let the record show that Mr. L. Boteler, one of the Trustees, has now entered the court room. Mr. Sampsell and Mr. McKee, the other two Trustees, are not here.

Now, so that there may be no question about the record, the Court will require some kind of a statement from Mr. Sampsell and Mr. McKee that they had notice about this [8] hearing so that there will not be any question but what they had an opportunity to be heard.

Mr. Gendel: I do not know what your Honor is driving at in reference to their knowledge or notice. Mr. Sampsell signed this Petition, if I understand correctly, after talking to Mr. McKee and Mr. Boteler. Mr. Boteler is here; and as I have indicated, Mr. Sampsell is up North on this estate's business. I have not talked to Mr. McKee.

The Referee: But I want to make sure that both Mr. Sampsell and Mr. McKee knew of this hearing on this day so that there may be no question but what they were given an opportunity to be heard. That is the gist of the thing, gentlemen. The gist of the matter is that the Trustees, and now the Interveners, should have been given the opportunity to be heard upon their Petition.

Mr. Gendel: Of course, to be frank with you, your Honor, I do not take that view at all. I believe the authorities are very clear—and I do not want to argue them, I think they have been argued sufficiently in this matter—as indicating that a verified Petition complying with all the requirements of law is the prima facie requirement and evidence. If the Referee then feels that there is any reason possibly to deny that prima facie showing, then the Referee can not do it Star Chamber or ex parte or otherwise but must set the matter down for hearing. And at that time, just as would be the case in

any matter of disqualification, [9] the available evidence, if any, would have to be submitted to contradict the Petition. At this time, therefore, I would like to make an offer of proof that the Trustees, if called to testify, and the Interveners, if called to testify, would testify under oath in accordance with the written, verified Petitions and acknowledge affidavit that your Honor now has, being the basis for the original application for the employment of certain named counsel, to wit, Frank C. Weller, of Craig & Weller; Thomas S. Tobin; and Martin Gendel.

The Referee: You have no adversary, Mr. Gendel. The Court is not an adversary. Let us keep that clear.

Mr. Gendel: We seem to have had one. It was quite effective, has been for eleven months. We have not acted as counsel. If the Court feels that he needs the assistance of any one to present any evidence or anything of that character, of course we want to cooperate with the Court. But the showing, in our estimation, springs from the verified and sworn matters which your Honor now has before you. There is nothing more we can do except to get up and reiterate what is a matter of sworn record.

The Referee: You gentlemen are here in compliance with the ruling of the Circuit Court of Appeals,—

Mr. Gendel (Interrupting): Yes.

The Referee (Continuing): —which says you are entitled to a hearing. You may proceed. [10]

Mr. Gendel: We are asking now that your Honor accept the offer of proof; and that is that the Trustees and Interveners, as named, would testify in accordance with the original verified Petition and the sworn Affidavit of non-disqualification.

The Referee: You are stating that if each of the Trustees was called he would testify under oath to the matters set forth in the Trustees' Petition regarding the employment of counsel?

Mr. Gendel: That is right.

Mr. Boteler, will you take the stand, please?

All that Mr. Boteler will testify to, your Honor, is that both Mr. McKee and Mr. Sampsell, as well as himself, had knowledge and notice of the date of this hearing and it was their understanding that if any one appeared Mr. Boteler would be sufficient to testify for the group.

The Referee: He does not need to testify under oath. The only thing I want to be sure about, gentlemen, is that all of the Trustees have had notice of the fact that this was the time set for the hearing requested by the Trustees and Interveners.

Mr. Boteler: I know that Mr. Sampsell and I did, because we discussed the matter. I assume that Mr. McKee did.

The Referee: You do not know, though, do you?

Mr. Boteler: I only know it by hearsay, that he was told. But I do not know who told him. I did not. [11]

Mr. Gendel: I understood from Mr. Sampsell that he had talked the matter over with Mr. McKee and Mr. Boteler, and that he felt that the importance of his business up North on behalf of the estate was such that his presence was more urgently required there than here, where he could add nothing more to the Petition than was already on file. I can only tell your Honor about it. I know Mr. Sampsell and Mr. Boteler knew about it. I do not know how important it is that Mr. McKee be present.

I suppose we could obtain for your Honor, if that is necessary, an acknowledgment that he had notice of the date of the hearing.

The Referee: I think that would be sufficient.

Mr. Gendel: We shall be glad to obtain that for you.

The Referee: All right. Is there anything else about which you wish to examine Mr. Boteler?

Mr. Gendel: No, your Honor. That was the purpose.

The Referee: Mr. Boteler, a statement is made in the decision of Judge Denman of the Ninth Circuit to this effect: He first refers to a decision in the case of Kanter versus Robertson, 102 Federal (2d), 92, which decision said: (Reading)

“‘. . . Ordinarily the choice of an attorney for the Trustee rests with the Trustee subject to the approval or disapproval of the referee or judge, and the choice of the trustee should be confirmed unless good reasons appear to the contrary.’”

The Judge Denman goes on to say: (Reading) [12]

“The reasons of the referee ‘to the contrary’ were arrived at by an ex parte process of which the trustees had no knowledge until the order was entered. Thus the referee frustrated the first choice of the trustees for their attorneys for the important and difficult work before them.”

Now you were one of the Trustees at the time that this Petition was presented last January; is that the fact, Mr. Boteler?

Mr. Boteler: Yes, sir.

The Referee: Do you have any recollection at all of the circumstances surrounding the selection of counsel by the Trustees?

Mr. Gendel: Your Honor, might I perhaps clarify the record to show what I believe your Honor desires it to show: That your Honor, after the Trustees had indicated to the Court whom they desired to employ, then indicated to the Trustees that you would not approve such a selection; that, in spite of that indication, the formal Petition, which is now before the Court, and the Affidavits were then presented to your Honor? That particular language of Judge Denman was his voluntary language; and the only thing that was urged before the Appellate Court, as appears in the record, was the fact that there was no court hearing; that the ruling made by your Honor was in chambers, without the presentation of any evidence. [13]

The Referee: I understand you, then, Mr. Gendel, as stating that before the Referee entered the Order of January 2nd—

Mr. Gendel (Interrupting): The last one was January 22nd, your Honor.

The Referee: January 22, 1944, yes.

Then do I understand you, Mr. Gendel, to state that before the Referee entered the order of January 22, 1944, in which he denied the Petition of the Trustees for leave to employ Craig & Weller, Thomas S. Tobin, and Martin Gendel, and even before in a previous order, in which the Referee granted the Trustees' Petition to employ Irving Walker and held their Petition as to Craig & Weller and Martin Gendel and Thomas S. Tobin under future submission, the Referee informed the Trustees of his anxieties on this particular question and told the Trustees that he was concerned about certain phases of the case and that he would not authorize the employment of Craig & Weller and Martin Gendel and Thomas S. Tobin—are you now saying that that is the fact?

Mr. Gendel: Yes, I do not think there is any question about it. Where the Circuit Court got its information I do not know.

The Referee: Are you also saying that before the Order was made Mr. Weller personally interviewed the Referee on the question? [14]

Mr. Weller: Yes.

Mr. Gendel: We will so stipulate.

The Referee: Then you say there is no basis for Judge Denman's statement that the reasons of the Referee "to the contrary" were arrived at by an ex-parte process of which the Trustees had no knowledge until the Order was entered?

Mr. Gendel: I think that the unfair language of Judge Denman was that the Trustees had no knowledge, because it is obvious that they knew what your Honor was thinking from the time that your Honor apparently started thinking of it.

The Referee: Well, do you say there is no basis in the record for that statement by Judge Denman?

Mr. Gendel: As to the ex-parte, I believe that arrangement was ex parte. There was no court hearing. But as to the Trustees' having knowledge of what was in your Honor's mind at all times, there is no basis for that statement at all. Where he got that information I still do not know. However, I do not know that that affects the issue at all. I am glad to clarify the record if there is any question about it.

The Referee: Well, Mr. Boteler, do you want to present anything at all in support of your Petition to employ Craig & Weller and Martin Gendel and Thomas S. Tobin?

Mr. Gendel: Your Honor, you mean other than the verified Petitions we have now accepted as his testimony?

The Referee: Yes, other than what is in the Petitions? [15]

Mr. Boteler: I think not, sir; not that I know of.

The Referee: What is the purpose of the hearing you want? You told the Ninth Circuit that this Order was not proper because you did not have a hearing. What do you want to bring out in the hearing? All the matters that have been brought out thus far were before the Referee at the time he made the Order.

Mr. Gendel: Your Honor, I think—

The Referee (Interrupting): I am addressing myself to Mr. Boteler. He is here without counsel.

Mr. Boteler: Well, I just stood here trying to recall; and I recall the situation as Mr. Gendel has outlined it, that we knew about what was in the Referee's mind before the Referee made this Order. I do not remember too clearly when it was first discussed or how many times it was discussed; but I am quite sure that that is true. Now in response to your question, if the Court please, as to what is the purpose of this hearing—and I assume you ask that question because I state I have nothing further to present to the Court with respect to this Petition—

The Referee: Yes.

Mr. Boteler (Continuing): —I do not know except in a general way. As the Court knows, I am not an attorney myself; and I understand that this hearing results from an Order by Judge Denman that it be heard by you.

The Referee: That is right. Judge Denman sustained [16] your position, Mr. Boteler, that before denying your

Petition for leave to employ these gentlemen the Referee should have had a hearing. That is what he says:

"The order appealed from is reversed and the case remanded for a hearing on the merits of the petition for the employment of the attorneys."

Mr. Boteler: If this hearing is for the purpose of taking testimony as to whether or not the Trustees knew anything about how you felt until after you made your Order, it seems to me the hearing is to no purpose, because we know that—

The Referee (Interrupting): No, that apparently was not the reason for the hearing. Just what I am to hear I do not know. He says "the hearing on the merits of the petition."

Mr. Boteler: Well, if your Honor please, if you do not know, I do not know, I am sure.

The Referee: In any event, you have nothing to present?

Mr. Boteler: No, sir.

The Referee: And, Mr. Gendel, the Interveners have nothing further to present?

Mr. Gendel: You mean other than our sworn affidavit, your Honor?

The Referee: Yes.

Mr. Gendel: Not unless your Honor would care to have Mr. Weller and me testify in response to any questions. We [17] shall be glad to do that if there is anything further that is not covered in the Affidavit.

The Referee: I am not an adverse party.

Mr. Gendel: I do not know whether we have made ourselves clear or not. As far as we are concerned, we

feel that the opinion of the Circuit Court of Appeals justifies the position which we have taken throughout these proceedings; and that is that a verified Petition for the Trustees, accompanied by a sworn Affidavit which complies with General Order 44 and the requirements of the Bankruptcy Act and the applicable authorities is a prima facie case. From there on, your Honor, we seek to pass the ball to those who would disqualify us.

(The Clerk enters.)

The Referee (To the Clerk): Let me have the Bankruptcy Act, please.

(The Clerk leaves.)

Well, I think at that point I should insert in the record an official statement of the fact that at no time has anybody attempted to disqualify either Mr. Gendel or Mr. Weller or Mr. Tobin; to make it clear that the Referee was never asked by anybody to disqualify any of you gentlemen.

(The Clerk enters, hands papers to the Court, leaves.)

Well, let us see what General Order 44 says. The Trustees' Petition which is before the Court here alleges [18] that they are the Trustees; that it is necessary to have counsel employed under a general retainer for the purpose set forth in the Petition; that they propose (reading)

" . . . upon the granting of this Petition to employ Messrs. Craig & Weller with whom will be associated Thomas S. Tobin and Martin Gendel, also to employ Irving M. Walker of Los Angeles, California, who are specialists in bankruptcy matters, as such counsel, and they have agreed to accept as compensation for any services rendered to your petitioners as Trustees,

such amount as may be allowed therefor by this Court to them as attorneys for the Trustees."

Then there is the further allegation that the interests, properties, and enterprises of the bankrupt are very extensive, and so forth, and so forth.

Then there is the following allegations: (Reading)

"That to the best of your petitioners' knowledge, said attorneys, and particularly, Craig & Weller, Thomas S. Tobin and Martin Gendel, represent a number of unsecured creditors of the above estate whose claims were filed and allowed at the first meeting of creditors herein, and whose interests are identical with those of your petitioners, and that said attorneys, or none of them, have any connection whatsoever with the bankrupt or debtor, [19] nor has said bankrupt or debtor any connection with them, or any of them, nor are the attorneys, or any of them, under any obligation whatsoever to said bankrupt or debtor."

I shall suspend this discussion for a moment to call to your attention, gentlemen, that we are honored by the presence in the court room of the Honorable Estes Snedecor, a Referee in Bankruptcy of Portland, Oregon.

We are glad to have you, Mr. Snedecor. Will you be more comfortable there, or would you care to come up and sit behind the bench? The bench was made too small really to take care of a man of your dimensions, physically or mentally.

Mr. Snedecor: I am very comfortable here, thank you.

The Referee: We are particularly glad to have Referee Snedecor here because, as you know, very valuable assets

of this estate are located in Referee Snedecor's jurisdiction and he has already had contact with the case.

The interesting point we are trying to decide here, Referee Snedecor, is whether or not the present attorneys, Grainger & Hunt, with whom you have had some contact, should be replaced with other attorneys, namely Messrs. Craig & Weller, Thomas S. Tobin, and Martin Gendel. So it is appropriate that you are here, because you may see these gentlemen later on. You will have an opportunity now to size them up when you are not on the bench. [20]

To resume our consideration of the present matter, I shall read your allegation No. VII:

"That your petitioners are satisfied from the Affidavit of the attorneys proposed by your petitioners attached hereto that said attorneys, or none of them, represent any interest adverse to your petitions as Trustees, or any creditor, in matters upon which said attorneys are to be engaged, and that the employment of said attorneys under a general retainer would be for the best interest of this estate.

"Wherefore, your petitioners pray that an Order issue appointing Messrs. Craig & Weller and Irving M. Walker and their associates as attorneys for your petitioners as Trustees in Bankruptcy herein."

Well, now, Mr. Boteler, before the Order which was reversed by the Circuit Court of Appeals was made, you were informed, were you not, that the Referee had received in his office a letter, a copy of a letter, apparently sent out by the Hotel Stratford, one of the entities of Christ's Church of the Golden Rule? That letter said,

among other things, it being addressed to a creditor of Christ's Church of the Golden Rule: (Reading)

"The Los Angeles Board of Trade, 704 So. Spring, Trinity 2614 and Rachael (sic) Dechter, 417 So. Hill, Trinity 8383 are prepared to handle claims in this [21] matter for any creditor who wish to consult them."

And I think the Referee said to you gentlemen at the time this letter was discussed that there was a possibility that, because of this reference to the Board of Trade, some one might say there was collusion between Craig & Weller, attorneys for the Board of Trade, and the attorneys for the Bankrupt Corporation. Did I say anything along that line?

Mr. Boteler: I recall some such discussion and some such language.

The Referee: All right, Mr. Boteler, before you signed the Petition which was later filed in this Court for the employment of Messrs. Craig & Weller and Mr. Gendel and Mr. Tobin, did you make any investigation at all about the situation?

Mr. Boteler: With particular reference to that letter?

The Referee: Yes, did you make any investigation to satisfy yourself as to why the Hotel Stratford made any reference at all to the Board of Trade, as to how they found out about the Board of Trade? Did you make any such investigation?

Mr. Boteler: If it can be called such, I think I did this: To begin with, isn't that the letter that referred to a Board of Trade located in a building at 704 South Spring Street?

The Referee: That is right. [22]

Mr. Boteler: That building happens to be the building in which I have my own office. I think I checked the telephone directory and then after further discussion or checking it was apparent that in referring to the Board of Trade it referred to what was known as the Retailers Board of Trade that happened to office in that building at that time.

The Referee: Yes. Well, did you go to the Hotel Stratford and try to find the person that sent this letter?

Mr. Boteler: No, sir.

The Referee: Did you try to find out why the person that wrote this letter referred to the Board of Trade?

Mr. Boteler: I made no such inquiry.

The Referee: Do you know whether your brother Trustees made any inquiry along that line?

Mr. Boteler: Sir?

The Referee: Do you know whether your brother Trustees made any inquiry along that line?

Mr. Boteler: At that time I don't recall that they did or that they said they did or that any one else said they did.

The Referee: Well, you said under oath, and your fellow Trustees said under oath, that to the best of your knowledge, Craig & Weller, Thomas S. Tobin, and Martin Gendel had no connection with the Bankrupt. Now you knew of course that Craig & Weller for many years had been attorneys for the Board of Trade? [23]

Mr. Boteler: Yes.

The Referee: You knew that?

Mr. Boteler: Yes.

The Referee: And if the Board of Trade had had any contact with the Stratford Hotel with reference to this bankruptcy, that would be a connection, would it not? But you made no investigation to find out whether anything had transpired or not?

Mr. Boteler: No. I made no independent investigation along that line.

The Referee: Well, gentlemen, suppose we go over the Order which the Referee made here and see whether or not you gentlemen wish to offer any evidence on any of the matters set forth in this Order.

The Order states, among other things, on page 2 thereof: (Reading)

"(1) That the employment by the trustees of Craig & Weller and their associates would leave this court and this estate open to the charge, however unwarranted it might be, that the said attorneys were influenced in the discharge of their duties and responsibilities, to the advantage or benefit of the bankrupt [24] corporation or its president and dominating personality, Mr. Arthur L. Bell, by something which occurred at the time of the appointment of the trustees in this case."

Now if you gentlemen want to offer any evidence on what is said there or want to make any comment, this is the time to do it.

Mr. Gendel: Mr. Weller, will you take the stand, please?

I might state for the record that our position is that we do not have to build up a straw man or a steel man and knock him down. Our position still is that we have presented a prima facie case, and that, as the Circuit Court

has indicated, we have fully complied with all the requirements of law and the General Order; but just to satisfy any personal apprehension that this Court might have and so that the Court may not believe we are avoiding or evading anything by technicalities which we could, otherwise, rely upon, I think it is well for Mr. Weller to take the stand and answer some questions so that they will be in the record.

The Referee: Very well. Come forward, please, Mr. Weller. [25]

FRANK C. WELLER,

having been first duly sworn, testified as follows:

The Referee: Be seated, please. Your name is Frank C. Weller?

The Witness: That is right.

The Referee: Proceed.

Direct Examination

By Mr. Gendel:

Q. Mr. Weller, with what law firm are you associated?

A. Craig & Weller.

Q. For how many years have you been so associated?

A. About twenty years.

Q. Before that you were independently in the practice of law, were you, in the City of Los Angeles?

A. More or less independent.

Q. Mr. Weller, so that there will be no question about the name situation, there was at one time a Los Angeles Wholesalers Board of Trade; is that correct?

A. That's correct.

Q. At what address did they have their offices?

A. 111 West Seventh Street.

(Testimony of Frank C. Weller)

Q. What was their telephone number?

A. TRinity 5531.

Q. Was the firm of Craig & Weller counsel for that organization? [26]

A. It was.

Q. When was that firm dissolved?

A. You refer to the Los Angeles Wholesalers Board of Trade?

Q. Yes, sir.

A. Well, my best recollection is that the Los Angeles Wholesalers Board of Trade merged with the Los Angeles Credit Managers Association approximately two years prior to the time that this Petition in issue here was filed with this Court. I handled the legal matters in connection with the merger; and since that time what was the Los Angeles Wholesalers Board of Trade is a part of the Los Angeles Credit Managers Association and known as the Adjustment Bureau of that Association.

Q. That is, since approximately three years ago from the current date; is that right?

A. Approximately. That is my best recollection. I don't recall the exact date.

Q. Now, Mr. Weller, when the copy of the letter from the Hotel Stratford was called to your attention in January of 1946, did you make any investigation to determine whether or not any one, either in your law firm or in the Los Angeles Credit Managers Association, had any knowledge of or connection with the issuance of that letter?

A. Yes, I did.

Q. What did you do? [27]

A. Well, Mr. Tobin and I talked the situation over. Of course that is the first we knew of any such thing, was when the Referee here called the matter to our atten-

(Testimony of Frank C. Weller)

tion—or it was called to our attention perhaps by some one else; but I think the Referee called it to our attention.

Q. For chronological purposes will you answer this, please? Did you or any one that you know of have any notice or knowledge of any nature or character that letters of this type were being sent out by any one at any time that claims were being voted for the election of a Trustee?

A. None whatsoever.

Q. That, I believe, occurred on January 2nd and 3rd of 1946? A. Yes.

Q. All right, go ahead.

A. And then I talked with Mr. Engelman, of the Adjustment Bureau of the Los Angeles Credit Managers Association, after I had received this information that such a letter had been received by the Referee; and he said he certainly didn't know anything about it and that they had never contacted any one connected with the Christ's Church of the Golden Rule and it was totally without the knowledge of any one in their department.

Q. Now, Mr. Weller, did you have any contact at any time, directly or indirectly, through any principal attorney, agent, or representative of the Bankrupt, with [28] reference to any arrangement concerning the filing or voting of proofs of claim?

A. No, I certainly did not. As a matter of fact, to the best of my knowledge I never met any one or talked to any one who was in any way connected with Christ's Church of the Golden Rule prior to the first meeting of creditors up here.

Q. Did you make a check of the claims which were voted through your power of attorney on behalf of the Los Angeles Credit Managers Association Adjustment

(Testimony of Frank C. Weller)

Bureau and the San Francisco Board of Trade to ascertain whether any claims were voted that were solicited by this type of letter in electing the Trustees?

A. Well, my recollection in talking the matter over with Mr. Engelman is that there was nothing in any of the claims which came in which indicated that they were the result of that letter.

Q. Those claims that were filed with the Court were on the forms provided by the Los Angeles Credit Managers Association or the San Francisco Board of Trade; is that correct?

A. That's right.

Q. Now do you know whether or not either you or Mr. Tobin of your firm has made any arrangement or has any understanding, directly or indirectly, with any person connected with the debtor or Bankrupt or any one on behalf of [29] the debtor or bankrupt whereby you would be under any obligation of any nature or character?

A. None whatsoever.

Q. Do you know anything about the sending of the letter that the Court has referred to or anything about it?

A. No, I know nothing whatsoever about it.

Q. Do you feel that if you were employed as attorney, or as one of the attorneys for the Trustees you would be under any kind of obligation, directly or indirectly, on behalf of the Bankrupt or counsel for the Bankrupt or any one representing the Bankrupt?

A. No, none whatsoever.

Mr. Gendel: Is there anything further your Honor would like to inquire about?

The Referee: You finish your questioning.

(Testimony of Frank C. Weller)

Mr. Gendel: Q. Mr. Weller, since you are both a witness and an attorney, is there anything you would like to add? A. I don't know of anything further.

Mr. Gendel: That is all from Mr. Weller, your Honor.

Examination

By the Referee:

Q. Mr. Weller, reading from page 9 of the Order which was reversed by the Circuit Court of Appeals—rather, on page 17—we find this statement: (Reading)

“It appears that some time ago the Los Angeles [30] Wholesalers Board of Trade underwent some sort of reorganization and that the new entity is known as Los Angeles Credit Managers Association. However, in bankruptcy circles the organization is still familiarly referred to as the Board of Trade.”

Would you say that that was true or not true?

A. I think it is quite frequently referred to as the Board of Trade.

Q. I am speaking of the time when this Order was made in January of 1946. Would you say that statement was true or untrue?

A. I think it is a pretty fair statement. I couldn't say categorically that it was true or untrue; but I think it is a fair statement that sometimes it was referred to—still is referred to—as the Board of Trade in bankruptcy circles.

Q. Now, then, the Order goes on to say: (Rearing)

“ . . . Indeed, the current telephone directory still lists the Los Angeles Wholesalers Board of Trade as a subscriber.”

(Testimony of Frank C. Weller)

Would you say that statement was true or untrue?

A. Yes, that was true.

Q. Then the Order goes on to say: (Reading)

"It has been suggested that the writer of the Hotel Stratford letters, above mentioned, did not intend to refer to the Board of Trade, customarily [31] represented by Craig & Weller, for the reason that the address and telephone number given in the letter for the Board of Trade are not those of the entity which is now known as Los Angeles Credit Managers Association. I am entirely satisfied that the writer of the letters did intend to refer to the Board of Trade represented by Craig & Weller and that the erroneous address and telephone number were secured from the current telephone directory, in which there appears this listing: Board of Trade, L. A. Retail Board of Trade, 704 So. Spring, TRinity 2614."

Do you question that conclusion, Mr. Weller, that the writer of the letter did intend to refer to the Board of Trade that you represent?

A. Of course it would be impossible for me, Judge, to testify as to what was in the mind of the person that wrote the letter. I don't know.

Q. You do not know? And you made no effort to find out? A. No, I didn't make any effort.

Q. And, so far as you know, the Board of Trade which you represent made no effort to find out why the writer of the Hotel Stratford letters referred to a Board of Trade? A. As far as I know.

Q. Well, Mr. Weller, what creditors in this case did [32] your office represent before this proceeding was commenced on November 1, 1945?

(Testimony of Frank C. Weller)

A. Very frankly, I couldn't recall, Judge.

Q. You don't know? A. No.

Q. In the certificate on review in connection with the Order with which we are here concerned is incorporated a letter dated December 26, 1945, written by the Board of Trade of San Francisco to Mr. Engelman, manager of the Los Angeles Credit Managers Association, in which the statement, among other things, is made: (Reading)

"At the request of Mr. Fortner, of your office, I left for Willits last Friday afternoon to solicit proofs of claim of creditors of Denton-James Sawmill."

The letter is captioned "Re Christ's Church of the Golden Rule, Bankrupt."

Also in the same letter the statement is made: (Reading)

"Mr. Conners, attorney for the Board of Trade, will send a substitution of attorney to Attorneys Weller & Tobin for their use in voting the enclosed proofs and any other claims received."

What, if anything, did you personally have to do with the solicitation of claims to be voted by you or your firm in the matter of Christ's Church of the Golden Rule?

A. I don't think, to the best of my knowledge, that I [33] had anything at all personally to do personally with the solicitation of—

Q. (Interrupting) Did you know it was going on?

A. I don't know whether I knew it when it started or not, but I knew subsequently that it was going on, yes.

Q. You knew that before you voted the claims; is that it? A. Oh, yes, yes.

(Testimony of Frank C. Weller)

Q. Do you know whether at the first meeting of creditors you voted any claim of any creditor that your firm represented at the commencement of this proceeding or the Board of Trade of Los Angeles represented at the commencement of the proceeding?

A. There has been considerable time elapse since then, Judge. I couldn't recall definitely the name of any particular creditor at this time.

Q. Mr. Weller, what was your first contact with this case?

A. I think the first I ever heard of this case, if I recall correctly, was through Mr. Hunt. I believe Mr. Hunt mentioned the fact that there was such a case.

Q. Did you have any conversation at all with any of the officers of the Bankrupt Corporation? A. No.

Q. You know Mr. Utley of course, the former Referee, who appears in the record as one of the attorneys for the [34] Bankrupt Corporation? A. That's right.

Q. Did you have any conversation with Mr. Utley about this case?

A. Not that I can ever recall—unless I met him on the street some day or something and might have had an informal talk about it. That would be all. I don't recall.

Q. You don't remember whether you did or not; is that right?

A. To the best of my knowledge I didn't. I don't think I did. I can't recall it now.

The Referee: All right, we shall take a short recess at this time.

(Recess.)

The Referee: Well, gentlemen, in order not to prolong this hearing I should like to suggest to you that the Order which was made on January 22, 1946, which is captioned "Order Denying Petition of Trustees for Leave to Employ Certain Counsel" sets forth in detail the reasons and the grounds upon which the order was made. I would like to ask you gentlemen if either any of you or the Trustees deny the truth of any statement of fact that is made in that Order.

Mr. Gendel: That is a rather broad question if I may bear the moving oar on behalf of the Trustees and the Petitioners in Intervention. But let us put our position on [35] this basis: We deny that—if the Court's conclusion is supposed to be grounded upon a fact found in those pages of memorandum, we deny that any one of the attorneys named, Frank C. Weller, Thomas S. Tobin, and Martin Gendel, had any connection, directly or indirectly, of any nature or character with the debtor, the bankrupt, counsel for the debtor or the bankrupt, which includes the Honorable Ernest Utley, or any one else on behalf of those persons as far as anything in connection with the case is concerned—including the solicitation of any claims.

The Referee: Are you making the statement, Mr. Gendel, that you had no conversation with Ernest R. Utley about Christ's Church of the Golden Rule before you appeared in this court on January 2, 1946?

Mr. Gendel: Other than meeting him here in the court room on December 4, 1945, which was the date of the first meeting of creditors, yes.

The Referee: And you did not have any conversation with him in any manner whatsoever?

Mr. Gendel: Relating to Christ's Church of the Golden Rule? That is right. None of us had anything to do with

either Mr. Utley, any one in his office, or the bankrupt or any one on his behalf in connection with this case and the solicitation of any claims. The difficulty, your Honor, in answering the Court's claim is that your Honor has started with a conclusion and then has built more conclusions on [36] those conclusions. If we could start at a fact and work from that basis on, we would be able to answer that question a little more specifically. As far as the particular letter your Honor refers to in your memorandum on letters, we deny that the Los Angeles Credit Managers Association Adjustment Bureau and/or the former Board of Trade had any connection of any nature or character whatsoever with the sending out of those letters. Your Honor has asked a question previously as to how they happened to designate the Los Angeles Board of Trade as they did in the letter. I can guess, the same as the Court can. We appeared on December 4, 1945, with, at that time, approximately the same claims which were voted and recognized by your Honor on January 2nd and 3rd. And it was obvious whom Mr. Weller represented. As is indicated by the Court, he has been counsel for that group for many years. I think that at the very last meeting, which was apparently December 29th or December 31st, the two dates borne on those two letters, the Bankrupt became aware of the solicitation by the Attorney General of proofs of claims, which evidence was produced at the hearing on January 2nd and 3rd. And I think that then, perhaps in a desire to choose the frying pan over the fire, they sent out this type of letter, feeling that it would be possibly more pleasant for them to be in the clutches of the attorneys who had already indicated their position in voting claims, than to be in the clutches [37] directly of the office of the Attorney General

of the State of California. Now that is purely my guess. I do not know anything about it for the reason that we had no connection whatsoever, as has been indicated, with the Bankrupt or any one on his behalf. Therefore, your Honor, in asking questions of Mr. Boteler and Mr. Weller, questions about investigations, is asking us to prove an unnecessary fact. We know whether we had any contact with those people or not. We do not have to investigate that fact.

Your Honor says you are not questioning the qualification of any counsel; but the line of questions put to Mr. Weller indicates that the sworn Affidavit is perhaps being questioned to some extent as to his connections. I don't know in what manner your Honor wants a denial of the fourteen-page memorandum of January 22nd, because we have specifically and generally denied any connection whatsoever with the debtor at the time that the Petition was filed. We are glad to renew that denial under oath as of this date if it will be of any assistance. The only facts we concede in this case are that the letters were received by two creditors, neither of these creditors participating in the election of the Trustees, one dated apparently December 29, 1945, the other dated apparently December 31, 1945, referring to the fact that Raphael Wechter and the Los Angeles Board of Trade at the Spring Street address and with the telephone number [38] listed for it, were representing unsecured creditors. Those are the only facts in those fourteen pages. From there on it is the opinion of the Trustees and the suggested counsel for the Trustees that the Court has built up the conclusion that in some way some one might then be suspicious that there was a basis for any connection between the Bankrupt or some one on behalf of the Bankrupt and counsel.

The Referee: Just a minute.

Mr. Hunt, here is a message for you. (Handing a paper to Mr. Hunt.)

Mr. Gendel: I do not know whether the record shows it, your Honor; but with reference to the letter from San Francisco—I forget who wrote it—that letter was presented to your Honor on, I believe, January 3rd of 1946 in connection with the determination by your Honor whether or not the Attorney General of the State of California or Messrs. Craig & Weller were in a position to vote claims, the issue of solicitation having been raised. And after your Honor read the letter and heard the statement of facts with reference to the conduct of both the Los Angeles Credit Managers Adjustment Bureau and the Attorney General of the State of California, you made the ruling that neither entity or their representatives were to be disqualified because of alleged solicitation.

The Referee: That was as to the voting of claims.

Mr. Gendel: That is correct. [39]

The Referee: All right, now I think that in deciding the question which was before the Referee on the Petition of the Trustees for Leave to Employ Counsel the Referee might well take into consideration whether the attorneys that the Trustees wished to employ were in the case as a matter of right, because they represented creditors in the case at the outset of the case, or whether they were in the case merely because they had rustled up some claims that they might have the opportunity to vote and to put thereby somebody in as Trustee and in turn get the position of attorneys for the Trustees. I think that is something the Court should take into consideration.

Mr. Gendel: Your Honor has the testimony of Mr. Weller. I suppose that that ought to be sufficient as to his possible connection. I do not know whether your Honor wants my testimony or not. I shall be glad to give it if required.

The Referee: I am going to put the case in this condition: I am going to give you gentlemen an opportunity to offer any evidence you care to offer on any matter set forth in the Order denying the Petition of the Trustees for Leave to Employ Certain Counsel made January 22, 1946, in the Referee's certificate on review in this matter, which was filed in the Clerk's office on January 30, 1946, and in the Supplement to the Referee's certificate on Petition for Review, which was filed in the Clerk's office on May 24, 1946. In the absence of any showing to the contrary the [40] Referee, in now again passing on the Trustees' Petition, will make the finding that all the matters of fact set up in or contained in the instruments mentioned are true. I shall continue the matter to a day certain and give you an opportunity to examine those papers and offer such evidence as you may wish to offer, it being understood that in the absence of evidence the Referee will make a finding that the statements made or the matters contained in the instruments mentioned are true.

Mr. Gendel: What is the Supplementary Certificate, your Honor?

The Referee: You may read it for yourself, Mr. Gendel. It belongs in the Clerk's file. We have it here for the purpose of this hearing.

When do you want to take the matter up?

Mr. Gendel: May I see the Certificate? We may not want a continuance, your Honor.

The Referee: Yes. (Handing a document to counsel.)

Mr. Gendel: Your Honor, will the Court accept an offer of proof that Mr. Weller, if called to testify, will further testify that, as to the specific documents in the Supplement to the Referee's Certificate on Petition for Review, which is dated May 24, 1946, neither he nor any one to his knowledge had any contact with the persons purporting to send out these various documents, and that he had no knowledge concerning their origin nor the reasons for their [41] origin? Will your Honor accept that offer of proof?

The Referee: Yes, if you say that he would so testify.

Mr. Gendel: Yes, he would so testify.

The Referee: Is there anything else? Do you want a continuance or—

Mr. Gendel (Interrupting): For what purpose, your Honor?

The Referee: I have told you, that in the absence of any evidence the Court will make a finding that all of the matters of fact set forth in or contained in the instruments already mentioned are true.

Mr. Gendel: Would your Honor indicate what the findings of fact would be? I have no way of knowing from your memorandum.

The Referee: I am not going to indicate anything. You have an opportunity to read it.

Mr. Gendel: We have had an opportunity to read it. There is nothing to indicate that findings of fact—

The Referee (Interrupting): I am going to make findings of fact. That is why I say I am going to give you an opportunity to offer any evidence you wish to offer. If you do not wish to offer any evidence, I am going to

make formal findings of fact that all of the matters contained in the instruments mentioned are true, and I am going to draw my conclusions from those findings of fact. That is why if you want an opportunity you may have it to offer any evidence [42] on those questions.

Mr. Gendel: Perhaps I am being a little obtuse, it being a little late in the afternoon; but I do not quite follow what matters your Honor has in mind.

The Referee: Mr. Gendel, you persuaded the Ninth Circuit to give you a hearing. You have a hearing. Now go forward and present any evidence you want to.

Mr. Gendel: We have presented evidence that we have no connection with the Bankrupt or any one connected with it. What more are we supposed to do? Are these letters to overcome the Court's indicated opinion that only in the rarest cases should the Trustees' selection be denied? Shall we produce the debtor or the Bankrupt and put him under oath and have him testify that he never talked to anybody connected with the Los Angeles Credit Managers Association or Craig & Weller, Thomas S. Tobin, and Martin Gendel? Would that convince your Honor?

The Referee: Mr. Gendel, as an intelligent individual I am not going to take for granted that the typist at the Hotel Stratford picked out "Board of Trade" from the thin air and wrote it down on a piece of paper. She got it from somewhere.

Mr. Gendel: I think your Honor could likewise consider the fact that the Los Angeles Credit Managers Association appeared through Messrs. Craig & Weller on December 4, 1945, with a nice sheaf of proofs of claim. I think [43] probably the same batch of claims they had on January 2nd and 3rd. That would not be very hard to add together as two and two.

The Referee: All right—

Mr. Gendel (Interrupting): We are quite willing to—

The Referee (Interrupting): Gentlemen, I am not going to try your case for you. I am not an attorney here. I am the Judge. You are here. You have an opportunity to present whatever evidence you want to produce. If you do not want to produce anything further, I shall mark the matter submitted.

Mr. Gendel: Well, I think that out of an abundance of precaution, since it may be necessary to go back up the ladder again, we shall consent to the suggested continuance. Perhaps I am as I have indicated, a little obtuse this afternoon. I should like an opportunity to discuss the matter with my co-counsel and with the Trustees.

The Referee: All right, when do you want to take it up?

Mr. Gendel: Since this is apparently running into considerable money, which, if I understand the law correctly, is not collectible from the Referee personally, we should like it as soon as possible. Where is Mr. Bell? Does your Honor know? Is he in jail?

Mr. Hunt: I can answer that, your Honor. He just called me on the phone. Where he is I don't know. I imagine he is at home. [44]

Mr. Gendel: Is he available now?

Mr. Hunt: That is more than I can tell you. I never can find him.

The Referee: All right, what date do you want?

Mr. Gendel: How about Friday,—

Mr. Hunt (Interrupting): Wait a minute. I can say this, your Honor: Mr. Bell talked about meeting me and some others to discuss tax matters tomorrow.

Mr. Gendel: How about Friday, your Honor, at 2 o'clock?

The Referee: Subject to a matter that is set in the morning—I do not think it will go over, it is not the Church case—I shall be glad to set it on Friday at 2 o'clock.

Mr. Gendel: Thank you, sir.

The Referee: All right, the matter is continued to December 20, 1946, at 2 p. m. [45]

Los Angeles, California, Friday, December 20, 1946,
2 p. m.

The Referee: Christ's Church of the Golden Rule.

Mr. Gendel: Your Honor, we have been unable to locate Mr. Bell; and Mr. Utley this morning informed me that he had received word that Mr. Bell was probably in San Francisco. Mr. Utley suggested that the next time he was at all certain Mr. Bell would be available would be on the anniversary of this matter, on the 2nd of January, 1947. He said he had some court hearings and felt certain he would be before your Honor on that date. So, since we are of the opinion that the only person who could tell us what was in his mind and what motivated his sending out the letters which have concerned your Honor for a year, if he had any hand in it, would be Mr. Bell himself, I presume that we had better not try to introduce secondary evidence in the form of any employee who might say, "Yes, I sent out the letter; but somebody else told me to do it." We might as well go to the source. Then we can inquire as to why those letters were sent out. Then we can have both sides of the evidence, that indicated by Mr. Weller's testimony and the Affidavits and that indicated by the testimony

of Mr. Bell. I do not like to delay. This case has become most aggravating and irritating, because, computed on the per diem as reflected on the applications now before your [46] Honor, each day costs—I don't know how much but a sizable amount of money, depending on your Honor's ultimate decision on the application for fees. However, I do not know of any other way to answer your Honor's inquiry as to why the letters were sent out; so I think all we can do with reference to the matter is to continue the hearing.

Before that is done, however, I want to call two matters to your Honor's attention. One is that we had understood a mandate had come down and had been spread at the time we filed a petition for the hearing, as is now before your Honor; but we were informed this week that the mandate had come down only during the week. Mr. Chichester on our behalf, the Trustees' behalf, then had the mandate spread on the records and the minutes of Judge Mathes's court. I think it might be appropriate at this time, to eliminate any uncertainty in the record, that the Trustees move for an order of this Court permitting the consideration of the Petition and the testimony heretofore given, as if those items were present, after the spreading of the mandate if that is proper. I do not know just what jurisdictional effect our filing the Petition for a hearing has, whether it was of such a nature that it is a nullity or whether your Honor could now, by more or less of a recognizing order, permit the Petition and the testimony given to that effect, say, as of today, which is after the spreading of the mandate. It seems to me it would be an idle act for [47] us to refile a Petition for a hearing and start the matter over as of now and then have Mr. Weller testify.

The Referee: All right, if it is necessary, the record may show that the Petition for hearing in this matter and the Order fixing the time of the hearing may be deemed to have been filed subsequent to the time when the mandate was spread on the minutes of Judge Mathes's court, and that the proceedings had in this matter on December 16, 1946, before this Court may be deemed to have been had subsequent to the time that the mandate was spread on the minutes of Judge Mathes's court.

Mr. Gendel: Thank you, your Honor. Now the second item that concerns us is this: As your Honor will recall, when the matter was first presented for review to Judge Mathes, pursuant to your Orders of January 14th and January 22, 1946, the attorneys involved in the Petition, with the exception of Irving M. Walker, were permitted to intervene before Judge Mathes and then partook in the argument before Judge Mathes and before the Circuit Court as direct petitioners or appellants; and unless your Honor would have some objection to that type of procedure, I would like at this time, on behalf of Frank C. Weller, Thomas S. Tobin, and myself, to move to be allowed as Interveners in the hearing on the Petition of the Trustees now before your Honor.

The Referee: I do not think that such a motion is [48] necessary. I think the record shows, as you have indicated, that when the matter was pending before Judge Mathes on review Messrs. Craig & Weller; Mr. Tobin; and you, Mr. Gendel, were allowed by Judge Mathes to intervene as parties. Is that correct?

Mr. Gendel: Yes, that is correct, your Honor.

The Referee: I think that that was not changed in any way by the reversal of the Order by the Circuit

Court of Appeal and the direction that it be sent back for the purpose of having a hearing. So I consider that Craig & Weller; Mr. Tobin; and you, Mr. Gendel, are parties to the proceeding and I so regard you.

Mr. Gendel: You see, your Honor, my difficulty is that though I know it does not need a recognition from the Referee to acknowledge that there is an Order of the District Court, I do have the thought in mind that, since there is nothing in the Referee's records to indicate, as such, that there is an official acknowledgment of the attorneys as parties in interest, perhaps by a minute order, reflected in our oral Petition, then the records of the Referee might be made to show the recognition of the attorneys as parties to the hearing. The reason that I ask that is that in the event it should be necessary for any review to be taken then the record will be clear from its inception. We won't have to relate it back to any Order that was given back in February, 1946. [49]

The Referee: Suppose I make a note on our calendar here, which will be incorporated in our official docket, that the Referee finds that, pursuant to orders made by Judge Mathes in this case, Craig & Weller, Martin Gendel, and Thomas S. Tobin are parties to this proceeding?

Mr. Gendel: Fine, thank you. That would cover any ambiguity in the record.

Now to what hour would your Honor suggest the continuance on January 2nd? You probably have matters of more importance to the administration of the estate at the moment than our Petition for the Trustees. If it would accommodate the Court, I would just as soon have it set at 2 o'clock instead of 10 o'clock, which is probably the hour that the other matters are set for hearing.

The Referee: Just one second.

I have made this notation on our docket: The Referee finds that, pursuant to orders made by Judge Mathes in this proceeding, Craig & Weller, Martin Gendel, and Thomas S. Tobin are parties in the Trustees' Petition for Leave to Employ the said Frank C. Weller, Thomas S. Tobin, and Martin Gendel as their counsel in addition to Irving M. Walker.

Mr. Gendel: I think that that will cover it.

The Referee: That takes care of that?

Mr. Gendel: Yes.

The Referee: All right, let us get the 1947 calendar. [50]

Mr. Gendel: Mr. Utley informed me that on January 2nd—I think he said at 10 o'clock—your Honor had already set several important matters in the Christ's Church case, and that Mr. Bell would be here at that time. My suggestion was that if it would convenience the Court we could set this matter, then, for 2 o'clock that afternoon. That would clear your morning hearings, and we could have Mr. Bell here in the afternoon.

The Referee: Just a minute. I will get the calendar.

(The Clerk enters with calendar, leaves.)

There are several contested matters set for Thursday, January 2nd, at 10 o'clock in the Church case in addition to three other matters in other cases.

Mr. Gendel: Would January 3rd be better for your Honor? Our only desire is just to eliminate too much delay on this.

The Referee: No, I think the afternoon of January 2nd.

Mr. Gendel: 2 o'clock?

The Referee: Yes.

Mr. Gendel: Well, out of an abundance of precaution, although we do hope Mr. Bell will cooperate with us by being present, I shall ask that the Clerk issue a new subpoena. Then we shall try to get service on Mr. Bell so that we can be sure we can proceed with our hearing.

The Referee: All right, the matter will be continued to January 2nd, at 2 p. m. I shall be glad to give you a hearing on any day you want, even before January 2nd, if [51] you wish to arrange that.

Mr. Gendel: Mr. Utley intimated that he had no contact with Mr. Bell. I asked him if it could be arranged in advance, to suit the convenience of Mr. Bell, so that we should not have to pounce on him with a subpoena at some time inconvenient to him. Mr. Utley said no, he thought we had better wait until January 2nd; so apparently I have no choice in the matter.

The Referee: Let it be understood that if for any reason you want to advance this hearing to some date before January 2nd we shall be glad to cooperate.

Mr. Gendel: Thank you, sir.

The Referee: I know of no reason why it could not be advanced, because there are no other parties entitled to be present other than the Trustees and the Interveners.

Mr. Gendel: Yes, Well, I have notified the Trustees individually;—

The Referee (Interrupting): We have that on file.

Mr. Gendel (Continuing): —and I shall repeat that notice for the matter on January 2nd or any earlier date.

The Referee: I am not concerned about that. All I wanted for the file was some definite assurance that all of the Trustees had actual notice of the fact that this hearing was going on.

Mr. Gendel: Yes, sir.

The Referee: The file does show that they had actual [52] notice of this hearing today, and it is not necessary to file any further notice to them.

Mr. Gendel: Thank you, sir.

The Referee: Very well. That is all. [53]

Los Angeles, California, Thursday, January 2, 1947,
2 p. m.

The Referee: Christ's Church of the Golden Rule.

Mr. Gendel: Your Honor, I met Mr. Bell walking in the hall. I understood he was going to be here with us this afternoon.

The Referee: Yes.

(Mr. Bell enters.)

All right, you may proceed, Mr. Gendel.

Mr. Gendel: Mr. Bell, will you please take the stand?

ARTHUR L. BELL,

called as a witness, having first duly affirmed, testified as follows:

The Referee: Be seated, please. Your name is Arthur L. Bell?

The Witness: It is, sir.

Direct Examination

By Mr. Gendel:

Q. Mr. Bell, in December, 1945, you were connected with the Bankrupt Corporation; is that right?

A. I was, sir; still am.

Q. In what capacity?

A. President of Christ's Church of the Golden Rule. [54]

Q. Did that connection continue in the month of January, 1946, also? A. It did, sir.

Mr. Gendel: Your Honor, may I please have the exhibits in this hearing?

The Referee: What do you mean? Were there exhibits in the previous hearing on December 20th?

Mr. Gendel: The exhibits, your Honor, were the copies of the letters your Honor questioned.

(The Clerk enters.)

The Referee (To the Clerk): See if there are any exhibits, please, on the Petition to Employ Counsel in the Church case.

(The Clerk leaves.)

The Witness: Your Honor, may the record show that I have appeared voluntarily without the need of a subpoena being served on me?

The Referee: The record may so show.

(Testimony of Arthur L. Bell)

Perhaps if you will examine the Certificate on Review, you may find the papers you want, Mr. Gendel. In the meantime we will see if there are any formal exhibits.

(The Clerk enters, hands papers to the Court, leaves.)

Here you are, Mr. Gendel. (Handing papers to counsel)

Mr. Gendel: Oh, yes, the Certificate on Review I think will probably suffice.

Q. Now, Mr. Bell, may I call your attention, please, to [55] what might be described as a carbon copy of a communication on what purports to be the stationery of the Hotel Stratford, with the imprint "Hotel Stratford, 8th Street at Hoover, Los Angeles 5," and a carbon copy of a communication purporting to bear the date December 26, 1945. I ask you, please, to read that document. (Handing a paper to the witness) A. Yes.

Q. Now, Mr. Bell, I likewise direct your attention to another communication, this one appearing to bear the date December 31, 1945, likewise on what purports to be Hotel Stratford imprinted stationery, and ask you if you will please read that letter. (Handing a paper to the witness) A. It appears to be very similar.

Mr. Gendel: Now, your Honor, at the last hearing you referred to a Supplementary Certificate. Is that in this group?

(The Court hands a paper to counsel.)

Mr. Gendel: Thank you, sir.

Q. Now, Mr. Bell, I direct your attention to the documents contained in the Supplement to Referee's Certificate on Petition for Review of Orders, which Supplement is dated May 24, 1946. Now I ask you to look

(Testimony of Arthur L. Bell)

at what purports to be a charge ticket on Wolcott's, referring to a charge for Proof of Unsecured Debt and Letter of Attorney. (Handing a paper to the witness)

A. Yes. [56]

Q. Then next to it is a memorandum, apparently in duplicate, headed "P 36 B, American Laundry," with the names of apparently seven entities there, or persons, and ask you to examine that document. (Handing a document to the witness) A. Yes.

Q. I think the one below it is a duplicate. Then I believe the last document is something that purports to be a carbon copy on a piece of plain white paper bearing date of December 28, 1945, and starting with the words, "Please check with all of our Oregon creditors," and ask you to read that document. (Handing a paper to the witness) A. Yes, I have read it.

Q. Now, Mr. Bell, what, if anything, did you have to do with the sending out of those documents?

A. Well, I think I had considerable to do with it.

Q. In other words, you are familiar with those documents, are you? A. I am familiar, yes.

Q. Why were they sent out? Just tell us the circumstances.

A. I will send my memory back. A great deal has happened in the last year or more. I think I can remember enough, however, to put together the picture. When I went, as President of Christ's Church of the Golden Rule, to interview Mr. Utley, of Utley & Cobb, in company with Mr. A. L. Wirin, one of our attorneys, at the request of Mr. Parsons, [57] who was at that time up in Oregon, we had an extensive interview on the possibility of our acting under the bankruptcy laws

(Testimony of Arthur L. Bell)

to obtain what we thought would be protection against some very unjust persecution and interference with our rights of religious freedom. I mentioned to Mr. Utley that our major problem consisted of having the resources of our Church and its very valuable records put into the hands of responsible men in some responsible court that would be impersonal, impartial in its handling of our affairs; that there would be no prejudice and no declared intention to dissolve our Church, destroy our Church, break up our membership, or discredit the teachers or the teachings in our Church; that we felt the State Courts were not going to respect our rights of religious freedom; that we would have no protection; that we wanted to know if there was any law of any kind that would hold our assets until the audit had been finished, protect our creditors, whom we felt were not being protected. The Receiver had refused to pay bills, even utility bills. Our credit, that we had spent some years building up, assets worth millions of dollars, were being jeopardized. Crops we had planted in the Imperial Valley were being neglected. Our losses were running up very rapidly. Our creditors were being jeopardized. I asked Mr. Utley, if we filed a list of unsecured creditors, if when sufficient money had been acquired to pay those unsecured creditors our properties would be back in our hands; if we [58] could put up our total resources as a means of securing those listed creditors, if we would have again control of our Church when those creditors were paid. I understood from his explanation that that would be the case. My next question was whether or not there was any way our creditors could have some voice in the selection of our Trustees, our representatives,

(Testimony of Arthur L. Bell)

to make sure that our problem would not become a political football, that no prejudice would be used in dealing with us, but instead our assets would be protected until our creditors, our listed creditors on our schedules, had been paid and we could be assured that the enmity against our teachings and our Church and some of us in official positions would not have any part, or become any part, of a bankruptcy proceeding. He assured me that so soon as we had acquired sufficient in the way of money or had sold enough properties to pay the listed creditors, that we would be free of the jurisdiction of any Trustees or their attorneys—who might be under the Court until some legal period had passed and we could be relieved of the Bankruptcy court, but that we would have management and control. When I first talked to him, we thought we would have complete management and control under the jurisdiction of the Court. Later, when it became evident that Judge Mathes would not grant us that type of a proceeding, we would have to go into voluntary bankruptcy, we had further conversations; and once more he assured me that our [59] creditors would be in a position to control the situation. Ninety-five per cent of our creditors were our friends. We knew their first concern would be to protect us and to prevent our assets from being dissipated or to prevent this matter from becoming a political football used by Communists and those who hate our type of teachings to destroy us. He then told me of certain persons who could be trusted to act in an impartial manner.

He said, "Your creditors will have to elect some one. You have explained your problem to me. These persons have long experience in this matter. Your creditors,

(Testimony of Arthur L. Bell)

if they decide that they wish, instead of having their own separate attorneys in each instance, to have a group of experienced men to deal with this matter—I can assure you that there will be no prejudice; that your affairs will be protected; that great dispatch will be exercised to pay off these listed creditors; and that in a few weeks the matter would be over. I again asked him whether the creditors would have to select some one of their own acquaintance, some one within their own group, whether they would have the right to do so. I was told the courts would not deal in a friendly manner—would not be friendly towards the idea of strangers to bankruptcy proceedings acting as Trustees or attorneys for Trustees but instead would expect to have experienced—men experienced in bankruptcy procedure, and that our creditors, instead of meeting among themselves and deciding whom they [60] would select and whom we could be sure would protect our rights and not permit any dissipation of our resources to take place or any delay—that it would be better, that it would be advisable, have experienced bankruptcy men carrying on the negotiations; that I need have no fear but that nothing would at any time be permitted to take place by those men who would waste any time in the Bankruptcy Court, any of our resources, or permit the matter to become a political football as it had become with the Attorney General's office and his political appointees; that they would be kept out of the picture entirely. I asked him for the names of certain persons who had had experience and whom we could advise our clients would be prepared to handle this matter in an impartial and impersonal manner and who were supposed to be men he had known for many years and that he

(Testimony of Arthur L. Bell)

could guarantee would have no prejudice in any of our dealings. He named Mr. — I forget, it begins with a G—

The Referee: Goggin?

The Witness: Mr. Goggin was one; and at that time it was our opinion that only one Trustee would be needed. I could take the time to be in daily contact with him and be sure he would understand every phase of our problems—and they were intricate and complex, as the Court has discovered. I wanted only one as I couldn't train half a dozen or even three. But I could take one. He assured me Mr. Goggin, if our creditors wanted him, would be the one that would be able [61] to handle this matter. He says, "If something should happen he couldn't come in, Mr. Sampsell would be the second best." Then I believe he mentioned your firm of attorneys. I don't recall him mentioning any other firm at the time.

Q. When you say "your firm of attorneys," what name do you mean he mentioned?

A. Let me check just a moment. I think he said the matter would have to be handled in the court by the Board of Trade, and he mentioned some names. I don't recall at this time. In fact, at this time I don't even recall your name although I have heard it a number of times; but I have been going about twenty hours a day. The last week I think I have slept about one hour a night, and my memory is very fuzzy. However, he did mention several persons to me at that time; and the creditors were considerably disturbed over their treatment at the hands of the State Receiver, felt very much antagonistic over the manner of their dealings, felt they

(Testimony of Arthur L. Bell)

were being greatly jeopardized. And we went into bankruptcy to assure them and also assure our people that there would be no unnecessary raids upon our assets or our resources. We showed our good faith by putting all our affairs into the hands of the Federal Courts, feeling that the first and prime issue they would pass upon would be our rights of religious freedom. They were sworn to protect our rights. We felt we would get full protection. We assured our creditors that if they would place their affairs in the hands of certain persons [62] their rights would be protected. That seemed to be their principal interest. Sometimes I think it was more their interest than their desire to be paid. From the impression that came to me I gained the impression they were primarily interested in protecting us, our people, our membership. I think they would have gone to any lengths to protect us. They would have voted in friends, who could have assured us protection, instead of strangers who have been at the beck and call of our enemies, the Attorney General's office, and destroyed thousands of dollars of our assets by their animosity and their willingness to deal with the enemies of our teachings and the enemies of our Church. We could have had friends. As it stands, we have had persons who have been inclined to deal with and help our enemies.

Q. Now, Mr. Bell, may I direct your attention to these two letters that I have shown you previously, one dated December 29th, one dated December 31st? What led up—not a general discussion but particularly with reference to those letters—what led to the sending of those letters? This is the one, the one you are looking

(Testimony of Arthur L. Bell)

at now, dated December 31st; and the other is dated December 29th.

A. Mr. Utley told me that the claims had to be filed in a certain period of time; if they were going to have a vote on the election of Trustees that the things would have to be filed; that the election would be determined by the greatest number of creditors and amounts of claims. We wanted to be [63] sure that our claims came in and came in the hands of friends, not enemies.

Q. As of those dates you caused to be sent out a series of letters— A. (Interrupting) We did.

Q. (Continuing) —along the tenor of the two letters that you have been shown as exhibits?

A. That's right.

Q. Is that correct? A. That is right.

Q. And that was done around the 29th of December, was it? A. Whatever the date was, yes.

Q. Now in connection with those letters had you talked to any one connected with what you understood was the Los Angeles Board of Trade?

A. I don't recall who the person was, but I met some one about that time. Is there a Mr. Tobin?

The Referee: Thomas Tobin?

The Witness: Is there an attorney by the name of Tobin?

Mr. Gendel: Yes, a Thomas S. Tobin.

The Witness: In my memory I met some one by the name of Tobin.

What is your name, sir?

Mr. Gendel: Gendel is my name.

(Testimony of Arthur L. Bell)

The Witness: I don't recall whether I met you at that time or not. I can't recall now. [64]

The Referee: Tell us about your contact with Mr. Tobin. When was it, and what was said?

A. Whoever the gentleman was, your Honor, my question was whether, if our creditors placed their claims in their hands, we could be assured of the election of Trustees who would be strictly impersonal in their dealings; who would, with the greatest possible dispatch, pay off our listed creditors. We never dreamed that there was a likelihood of other creditors walking in at that time. In the meanwhile we had to pay off \$115,000. We could have paid it off in forty-eight hours by selling some cattle and a few other things. I wanted to know whether we could be sure that we could close this matter up with dispatch. I was assured that could be done, there would be no unnecessary delays.

Q. When would you say that conversation took place? Was it before or after January 2, 1946?

A. Those conversations with Mr. Utley and Mr. Wirin of course took place long before.

Q. True, but in this conversation you are now telling us about—it was not before the Trustees were elected?

A. I met Mr. Goggin before.

Q. How? A. I met Mr. Goggin before.

Q. Let's see—

A. (Interrupting) I believe I met one of the attorneys before. It is my memory that a conversation of a similar [65] type—

Mr. Gendel: Q. (Interrupting) You had a talk—

The Referee (Interrupting): Just a minute.

(Testimony of Arthur L. Bell)

The Witness: It seems that that took place around that time. It is my memory that the notice sent out to creditors to cooperate fully in filing their claims were only sent out when I felt in myself the assurance that the entire matter would be handled most impartially and impersonally.

The Referee: Q. Any way, it seems that the substance of your conversation with this gentleman who may have been Mr. Tobin was that if you advised creditors to place claims with him or his firm to be voted—

A. (Interrupting) I don't think it went so far; I don't think it went so far. There was no bargain connected; I merely asked him if claims were filed with him we could be sure that the election of a Trustee, since it would be a majority in number and amount—whether we could be assured of the election of Trustees who would be most impersonal in this matter and not permit it to become a political football.

Q. Would you now say that that conversation took place before the election of Trustees, which took place about January 3, 1946?

A. It is my belief that it did although it is strictly from memory.

Q. Now let us see if we can identify the individual. [66] Can you tell us with any degree of certainty who the individual was?

A. Judge, I never had any extended conversations with any one. We dropped in at Mr. Utley's office. I shook hands with him. Remarks like that I just made to you. There were no long conferences. I never became acquainted with the gentleman. Mr. Utley assured me he had known him for years.

(Testimony of Arthur L. Bell)

Q. Where did you have the conversation you are now trying to recall?

A. In Mr. Utley's office so far as I can recall.

Q. And whoever you talked to was introduced to you by Mr. Utley? A. Yes.

Q. Can you now tell us who the individual was, where he came from, what firm?

A. In my best memory I remember distinctly meeting Mr. Goggin. I remember meeting Mr. Sampsell. I believe I went over to Mr. Sampsell's office. I am hazy on that; either Mr. Sampsell's office or Mr. Utley's office.

Q. Yes?

A. At that time we thought that there would be but one Trustee. I wanted to see what caliber of man was going to occupy that position since I would be giving my authority over to him—a grand experience!

Q. Yes? [67]

Go ahead, please.

Mr. Gendel: Q. Can you describe to us the person that you talked to at Mr. Utley's office?

A. I have given you all I can give you.

Q. I do not mean just by name. Can you give us a physical description of the man?

A. I have gone as far as I can go. I couldn't go any further than that. I have met so many thousands of people I couldn't go any further than that. All I recall is I met some—but a hazy memory tells me I met Mr. Goggin. I am sure I met him. I met Mr. Sampsell. Certainly I met those two gentlemen. And I believe I met a Mr. Tobin. Now, gentlemen, let me see if I can recall. I can't go any further than that. Something has come up from time to time in the last year that makes me

(Testimony of Arthur L. Bell)

believe I met Mr. Tobin, something connected with the Board of Trade.

Is Mr. Tobin connected with the Board of Trade?

Mr. Gendel: He is associated with the firm of Craig & Weller.

The Witness: Has he ever acted for the Board of Trade?

The Referee: Yes, he is an attorney for the Board of Trade.

The Witness: Then he is the one.

Mr. Gendel: You could not describe him as to his person and his looks, though; is that right?

A. No. I have met too many people—and too infrequently. [68]

Q. Would you say this meeting took place before the New Year or after the New Year?

A. Oh, I believe it took place before.

Q. Do you recall that we held—

A. (Interrupting) I recall—I seem to recall meeting—a gentleman I did meet somewhere in—goodness sakes alive, between November—between the 1st of November and the 15th of December, somewhere in there, I could be sure to have met these men. And I believe I met Mr. Sampsell and Mr. Goggin early in November—

Q. (Interrupting) Do you recall, Mr. Bell,—

A. (Continuing)—1945.

Q. (Continuing)—a meeting of the creditors being held on December 4, 1945?

A. I met these gentlemen before that time.

Q. Do you recall the first meeting of December 4, 1945; do you recall being in the court room?

(Testimony of Arthur L. Bell)

A. I seem to. Remember, I have almost lived here. I can't place dates.

Q. The reason I thought it might stand out in your memory was that that was the first large gathering of persons after a notice to creditors. I don't know whether this incident would refresh your recollection, but I think it was on that occasion that the Attorney General asked for a continuance of the first meeting of creditors.

A. I believe so. I believe I recall it. [69]

Q. With reference to that date, which I believe the record shows was December 4, 1945, do you now recall when you had the conversation that you have related to us with the person that you think was Mr. Tobin?

A. It must have been before that time, I believe.

Q. You think it was before?

A. Somewhere at the back of my memory I get that impression. It may have been about that date. I can't recall.

Q. The reason I ask you that question, Mr. Bell, is that I am a little bit puzzled as to why these letters were sent out on the 29th or the 31st of December. Do the dates mean anything to you now? Can you reconstruct what took place?

A. I might if you can refresh my memory a little bit. When were the Receivers appointed, the three Receivers, what date?

The Referee: November 19, 1945.

Mr. Gendel: What was that date, your Honor?

The Referee: November 19, 1945.

The Witness: I met these people before that time.

(Testimony of Arthur L. Bell)

Q. By Mr. Gendel: On December 4, 1945, the Court continued the first meeting of creditors to January 2, 1946. A. I met them before November 19th.

Q. Whoever it was you met, you think you met him at that time? A. Yes.

Q. If you recall, will you tell us why these [70] communications were apparently sent out around the 29th of December, 1945?

A. Evidently the claims were not coming in fast enough. Evidently we were approaching a time or there was a maximum limit of time when the Trustees would have to be elected. You see, there wouldn't have been even half of these creditor claims filed except that our people went to these creditors and assured them that it was the purpose of the corporation to make sure that they were properly protected, their claims were filed in time, and that it was our desire to stand in back of their claims and make sure they got dollar for dollar, and that there must be no neglect. We felt that if they tried to hire separate attorneys, it would only cause confusion; and if they permitted the Attorney General to handle their claims it would almost assuredly guarantee our quick dissolution and the destruction of our Church. Our creditors were our friends. They were people who had dealt with us a long time, who respected us and trusted us.

Q. Mr. Bell, just to refresh your recollection, if it does, when did you first discover that the Attorney General, through his office, was soliciting claims to be used on January 2, 1946?

A. Well, we knew immediately when we filed the bankruptcy papers that the Attorney General would try to control the situation. He appeared in Judge Mathes'

(Testimony of Arthur L. Bell)

court, made every effort to dominate the situation, and has tried to dominate [71] it ever since.

Q. I am now asking you the question if it does recall any particular date to you as to when you found out the Attorney General was soliciting the unsecured creditors. I am not talking about those who might now have what now has turned out to be the so-called fraud claims against the Corporation, but I am talking about a solicitation by the Attorney General of unsecured creditors.

A. We knew the Attorney General had been trying to turn our people against us for a long time. We knew he would try to stir up as many antagonistic issues as possible. But we discovered he was soliciting claims shortly after we filed papers in bankruptcy, that he desired to dominate the situation; and we couldn't remain passive and permit him to achieve that result. We had run away from the State Court that we might find some greater protection and respect for religious freedom than the State Court had. If the Attorney General could dominate the situation, we were very sure we could not get protection.

Q. Mr. Bell, the question I am asking you is this: Did you discover that the Attorney General was soliciting the unsecured trade creditors, the ordinary trade creditors, after December 4, 1945?

A. Oh, I think—just on memory I am not positive on this; but I think that we became aware of his attempt to dominate the creditor situation somewhere in November. I [72] could be wrong, but that is my memory now.

Q. If you do now recall, what I am now trying to get at is what were the facts behind your causing these letters to be sent out on as late a date as December 29th. De-

(Testimony of Arthur L. Bell)

cember 31st, for an election that was taking place on the 2nd of January?

A. Evidently all of the creditors had not yet filed. There may have been many who had, but there must have been some who hadn't.

Q. Do you now recall within your own knowledge, your own recollection, what took place at or about the date December 29, 1945, that led to the sending, for example, of the letter dated December 29, 1945?

A. I can't imagine except that there must have been a few who hadn't filed their claims or a considerable number who hadn't, and that we knew that if we were going to have an election here it would have to be a majority in number and amount.

Q. Mr. Bell, I do not want to cut you short on your explanation; but what we are trying to get now is not what you are imagining but what, if anything, you do recall.

A. That is the best of my recollection. You have asked me for it, and I have given it to you to the best of my memory.

Q. Do you have any definite—

A. (Interrupting) I know very definitely we went after these creditors because we wanted to be sure of a majority in [73] amount and number at that moment.

Q. You wanted to be sure; is that right?

A. That there would be a majority in amount and number who were friends, that we could be very, very certain that there would be no political football issues come up in this matter. If the Attorney General got hold of it, we knew that it would become a political football.

(Testimony of Arthur L. Bell)

Q. You wanted to be sure that the Attorney General did not control the majority in number and amount; is that right?

A. Yes, we wanted to be very sure of that.

Q. Other than this person you describe as Mr. Tobin and the conversation that you have given, did you ever meet with any one that you understood was in any way connected with the Board of Trade?

A. That is the only incident I can recall at this time, sir.

Q. Do you recall a man by the name of Raphael Dechter?

A. He wasn't connected with the Board of Trade;—

Q. (Interrupting) Do you recall Mr. Dechter?

A. (Continuing)—I don't think he was. Yes, I recall Mr. Dechter. I met him for the first time in Judge Mathe's court, some time between the 1st and the 18th of November. I don't know what the date is now, but I think it was early in November.

Q. Now have you given us— [74]

A. (Interrupting) The only conversations I ever had with Mr. Dechter were in Judge Mathes' court, and then a handshake and that's all; no conferences.

Q. Have you given us all the conversation, as you now recall it, as to what you said and as to what this gentleman you described as Mr. Tobin said on this one occasion?

A. I can't remember Mr. Tobin saying very much of anything. They accuse me of doing most of the talking. I think in that case I did. But I must have had his assurance that any one elected as a Trustee would be thoroughly impartial in his handling of our affairs and would

(Testimony of Arthur L. Bell)

guard against this matter of it becoming a political football and guard against our enemies' nominees of politicians turning it into a football. I must have had that assurance or he wouldn't have got my support otherwise. However, I haven't found assurances mean anything.

Q. Do you recall specifically what, if anything, Mr. Tobin, or this gentleman you think was Mr. Tobin, said to you in this conversation?

A. No, but his attitude must have indicated his assurance because I went to considerable lengths to make sure that claims were filed where they would be filed impersonally—as I thought.

Q. Was anything discussed by you and Mr. Tobin concerning the subject matter of whether or not you or any one else on behalf of the Corporation would control whoever would be [75] elected as Trustees?

A. Oh, at no time. There was no—I was assured there would be no need of that; that we could have these debts paid off as quickly as we sold some cattle and a few other things and probably have it back in our hands; and—didn't seem to be important.

Q. In other words, you did not discuss this subject matter at all with this gentleman you referred to as Mr. Tobin; is that right?

A. No, I am quite sure, I didn't discuss that.

Q. Do you know whether or not any of the claims which were covered by these letters around December 29, 1945, were voted pursuant to your letters on January 2, 1946?

A. Well—

Q. (Interrupting) Do you have any personal knowledge?

(Testimony of Arthur L. Bell)

A. I seem to remember Mr. Tobin or some one from the Board of Trade who was here voting claims. I can't recall now. Too much has happened.

Q. I do not know whether you know this or not, but apparently the record will show what was voted. I think their claims were voted on—

Your Honor, I do not want to misquote the record in helping this man refresh his recollection. When were the claims voted? I don't know whether it was December 4th or January 2nd.

The Referee: I do not know. What record will show that? [76] I do not think so. I think all the claims were voted on January 2nd, because my recollection is that at the request of the Attorney General we, on December 4, 1945, continued the first meeting of creditors for all purposes to January 2, 1946. It was apparent then that there would be a vigorous contest for the selection of Trustees. Later that month we authorized the employment of Arthur Young & Company for the estate upon the Petition of the then Receivers, and I recall that a day or two before December 31, 1945, I contacted Arthur Young & Company and asked them to send one of their auditors to this court on January 2, 1946, for the purpose of tabulating the claims that would be voted for Trustees. So, reasoning from that, I would say that all of the claims were probably voted on January 2, 1946. However, the only way to find out definitely whether or not any claims were voted on December 4, 1945, would be to consult the reporter's notes.

Mr. Gendel: Well, perhaps the thought I had in mind could be shown by the record. The claims may have been filed on December 4th.

(Testimony of Arthur L. Bell)

The Referee: But that of itself would not indicate whether they were voted the day they were filed. That is the trouble.

Mr. Gendel: The purpose we had in mind was not concerned with the voting of them.

The Referee: I shall get the list of claims so that we [77] can see when the claims were filed. But as to when they were voted, if they were voted on December 4th—

(The Clerk enters.)

(To the Clerk): Please bring me the list of claims in the case of Christ's Church of the Golden Rule.

(The Clerk leaves.)

If they were voted on December 4, 1945, that fact would be verified only by the reporter's notes. There is no other record here.

Let me see, did I forward with the Certificate on Review the auditors' tabulations? Yes, I did.

Mr. Gendel: I remember the gentleman's being present here on January 2nd.

The Referee: I forwarded the Certificate of Review, and it is a part of that record. The tabulations made by Mr. Brown, I think it was, of Arthur Young & Company, would show the number of claims voted, the amounts of the claims, and so forth. And his date is merely January 3, 1945.

Now the—

Mr. Gendel: (Interrupting) I am inclined to refresh my own recollection with the belief that when your Honor granted the motion for a continuance there was no voting for a Trustee on that first occasion of December 4th; but

(Testimony of Arthur L. Bell)

I am concerned in this question with whether or not the claims were filed on December 4th.

The Referee: Our record shows that the first claim [78] filed in this case was filed November 30, 1945; and on that claim Craig & Weller were named as attorneys in fact. On December 3, 1945, a claim was filed by a creditor without naming an attorney in fact—in fact, by two creditors. Then on December 4, 1945, there was one claim filed on which Craig & Weller were named as the attorneys in fact. And there were fifteen filed on which Craig & Weller and/or Thomas S. Tobin were named as attorneys in fact. And there was a claim filed on which Heim Goldman and James M. Conners were named as attorneys in fact. And on that claim Frank C. Weller and Thomas S. Tobin were later substituted for Heim Goldman and James M. Conners. Then on the same day there were twenty-five claims filed on which James M. Conners of San Francisco was named as attorney in fact. And as to all those claims Frank C. Weller and Thomas S. Tobin were later substituted for Mr. Conners.

Mr. Gendel: Were any claims, your Honor, according to the record there, filed on January 2nd by Craig & Weller, additional claims?

The Referee: All right. Now I have given you all the claims that were filed on or before December 4, 1945. Thereafter, between December 4, 1945, and January 2, 1946, several claims were filed on various dates, on which Craig & Weller, or Craig & Weller and Thomas S. Tobin, were named as attorneys in fact.

Then we get down to January 2, 1946. On that day among [79] others there were filed claims on which James

(Testimony of Arthur L. Bell)

M. Connors of San Francisco was named as attorney in fact; and as to those five claims Frank C. Weller and Thomas S. Tobin were later substituted for Mr. Connors. There were filed sixteen claims on which Craig & Weller and Thomas S. Tobin were named as attorneys in fact. There were on the same day a number of claims filed on which Mr. Raphael Dechter was named as attorney in fact. There were filed on the same day, January 2nd, a number of claims on which Robert W. Kenny, Attorney General of the State of California, was named as attorney in fact.

The first meeting of creditors was continued from January 2nd to January 3, 1946. On that day further claims were filed on which Robert W. Kenny was named as attorney in fact. That gives you the record on the claims.

Mr. Gendel: Q. Now, Mr. Bell, do you personally know—that is, of your own knowledge—whether or not any of these proofs of claims sent out—

I am sorry, your Honor, I shall need the Certificate on Review.

Q. (Continuing)—letters such as we have shown to you, those of December 29th and December 31st, were turned over to what you call the Board of Trade and filed by them? A. No.

Q. Do you know of your own knowledge?

A. No, I do not, sir. [80]

Q. Well, now, when your organization sent out a proof of claim—sent out a letter, I beg your pardon—such as the letter of December 29th or the letter of December 31st that have been exhibited to you, were there included in

(Testimony of Arthur L. Bell)

that envelope printed forms of proofs of claim which had been paid for by the invoice shown by the Supplemental Certificate contained in the record as heretofore shown to you?

A. I don't know. They may have been.

Q. Pardon me, sir?

A. They may have been. I do not know.

Q. Well, can you tell us now, if you know, what was done with the proofs of unsecured debt and letters of attorney shown on the Supplemental Certificate of the Referee?

A. I do not know unless they were filled out covering the respective creditors and sent through to them to sign, something of that kind. I do not recall now.

Q. Do you have any personal recollection, Mr. Bell, as to what was done, if anything, with the forms that had been purchased? First of all, let me ask you, Mr. Bell, whether you know anything about the purchase of these blank forms, these proofs of claim?

A. No, personally I do not.

Q. You do not? A. No.

Q. You would not very well be able to answer us, then, as to whether or not those particular forms accompanied these [81] letters dated December 29th and December 31st?

A. I know that some of our people helped the creditors wherever they could in filing their claims, told them they could select their own attorney or, if they cared to, file them with the Board of Trade or these other persons named; that the matter would be fairly handled and their interests would be protected and so on. That is all.

(Testimony of Arthur L. Bell)

Q. Mr. Bell, it is rather important to the Court and to the Petitioners to know whether or not you had any other conversations with any one that in your mind you can connect with the entity you call the Board of Trade other than this conversation you have described to us as having been had with a Mr. Tobin.

A. I don't recall at this time, sir. I evidently had sufficient assurance that the persons who would be elected would protect the interests of our people and our creditors.

Q. You might have received that assurance from Mr. Utley; is that not right? A. Might have, yes, sir.

Q. You see, I am trying to avoid the "might-haves" in this testimony if it is possible at all. Can you answer now whether or not you have any recollection at this time of talking to any one person who was in any way connected with the entity that you understood to be the Board of Trade? A. I do not recall at this time.

Q. And could you tell us at this time where you obtained [82] the name The Los Angeles Board of Trade, the address 704 South Spring, and the telephone number TRinity 2614?

A. Well, I will still have to guess. I imagine from Mr. Utley.

Q. Your recollection is that if you got it from anybody you got it from Mr. Utley; is that right?

A. That would be my recollection though I can't be sure of it. That would be my recollection.

Q. Now, Mr. Bell, have you ever spoken to any one, as far as you know, connected with the entity known as the Los Angeles Credit Managers Association?

A. I don't recall, sir. I don't know.

(Testimony of Arthur L. Bell)

Q. You have not heard that name before?

A. That name doesn't strike any responsive chord in my mind.

Mr. Gendel: Is there anything further, your Honor, you would care to inquire about from Mr. Bell?

The Referee: Yes.

Examination

By the Referee:

Q. Mr. Bell, if you talked to Mr. Tobin, if that was the name of the man you had the conversation with you have related here, why did you talk to him? Whom was he representing?

A. Whomever the man I was talking to may have been, your [83] Honor, he was supposed to have been representing either the Board of Trade or some attorneys with whom the claims could be filed who would have authority to elect Trustees in this matter—

Q. (Interrupting) Yes?

A. (Continuing)—and make sure that a Trustee who would not be the pawn of the Attorney General's office but could be impersonal and impartial in his handling of our affairs would be elected.

Q. In your conversations with Mr. Utley in the early stages of this case was the name of the law firm Craig & Weller mentioned, do you recall?

A. I don't seem to recall, sir.

Q. You do not remember that?

A. I don't seem to remember.

Q. But Mr. Utley did mention to you that the Board of Trade attended to the filing—

(Testimony of Arthur L. Bell)

A. (Interrupting) I think Mr. Dechter was also supposed to have been able to handle such matters, to be experienced.

Q. Now, Mr. Bell, in November of 1945 Christ's Church of the Golden Rule embraced a rather farflung organization; is that true? A. It did, sir.

Q. You had some seven or eight hundred people directly connected with the organization?

A. Right. [84]

Q. And its entities or agencies or "projects," as you called them, were scattered all the way along the Pacific Coast from the State of Oregon to the Imperial Valley?

A. They were.

Q. Now in contacting your people did you always resort to the mails, or did you have other means of communication?

A. Telephone calls frequently to any one of the student minister training project managers to transmit the message to all the other student ministers in that location. I could make four phone calls and reach any of them in an hour's time up and down the Coast.

Q. Would you say that the letters that Mr. Gendel has pointed out to you and which appear to have been sent directly to creditors about December 29th or December 30, 1945, were the first things done by you with respect to getting the creditors to file their claims; or was there something else that was done before that?

A. Not at all, sir. I had over the telephone contacted whichever student minister training projects were necessary and impressed upon them the importance of advising with creditors and letting them know that the Attorney General's office would only wish to have their claims for

(Testimony of Arthur L. Bell)

the purpose of destroying our Church and that unless they would hire their own lawyers that they should place their claims in the hands of persons who would not be pledged to assist the Attorney General in destroying the Church and turning our membership [85] against us and if possible destroying our Church.

Q. In such communications or telephone conversations did you mention any names of persons or entities that the creditors should be advised were in a position to handle claims?

A. Whatever names Mr. Utley had given me.

Q. And what were they?

A. I mentioned the Board of Trade and Dechter's office. As I recall now—they were the two that seemed to stay in my memory—and Mr. Connors up North.

The Referee: All right, is there anything else you want to ask, Mr. Gendel?

Mr. Gendel: I would say this, to clarify the record, if there is any question about it:

Direct Examination (Continued)

By Mr. Gendel:

Q. Mr. Bell, did you ever meet me, Martin Gendel, before December 4, 1945?

A. I don't recall having done so. I may have, but I just don't remember—unless I might have met you in Judge Mathes' court. If you were there, I probably would have met you. But I can not recall any other meeting.

Mr. Gendel: Would it be necessary, your Honor, for me to testify in that respect?

The Referee: You may make any statement you want. You [86] do not need to be sworn.

(Testimony of Arthur L. Bell)

Mr. Gendel: The only statement I want to make, so that the record will be clear, is that I never saw Mr. Bell prior to December 4, 1945.

The Referee: Will you also make a statement, Mr. Gendel, as to how it happened that you were working with the attorneys for the Board of Trade in the selection of Trustees?

Mr. Gendel: Yes, for the purpose of the record, I was called for and told that they had a problem on their hands that apparently was bigger than they could handle themselves if they were employed as counsel for the Trustees, and in that case would I be willing to be associated as an attorney on a financial arrangement to be later reached for the handling of such matters as could be split up between the offices so that they would not be swamped with the rather tremendous task that they anticipated.

The Referee: I see. All right, is there anything else?

The Witness: May I make a statement here, your Honor?

The Referee: Surely.

The Witness: We are letting down our hair about this matter.

The Referee: Yes?

The Witness: For whatever it is worth, it is my opinion that the Trustees and their attorneys were elected, given the power they have held for the last year, by a trade with [87] the Attorney General's office: If the Attorney

(Testimony of Arthur L. Bell)

General could have McKee, he would let Mr. Sampsell and Mr. Boteler, or Mr. Goggin, come in. I think the matter was entirely framed, cut and dried. I do not believe the creditors obtained what they desired, what they wished. They would have elected some one they know would have protected their interests. They would not have elected strangers. If these creditors had known what was going to happen to us, we would have been out of bankruptcy in six or eight weeks' time, because we would have had the unsecured creditors paid off—at least under a plan of arrangement. They thought they were electing men who would protect their rights and not permit this matter to become a political football, not permit it to become a weapon in the hands of the Attorney General's office, as it unquestionably has become.

The Referee: Is there anything else? Anything else?

Mr. Gendel: No, but I would like to have a recess to see if I can get hold of Mr. Tobin.

The Referee: Very well. We shall take a recess.

(Recess.)

Mr. Bell: Your Honor, may the record show that I, at five minutes after 3, was served with a subpoena to appear at this hearing after I had completed my testimony?

The Referee: Yes.

All right, come forward, please, Mr. Tobin. [88]

THOMAS S. TOBIN,

having been first duly sworn, testified as follows:

The Referee: All right, be seated, please.

Your name is Thomas S. Tobin?

The Witness: Yes, your Honor.

The Referee: Proceed.

Direct Examination

By Mr. Gendel:

Q. Mr. Tobin, when was the first time that you met Mr. Arthur L. Bell, who is the President of the Bankrupt Corporation?

A. I imagine it was around the time of the first meeting of creditors.

Q. Where did this meeting take place?

A. My first recollection of meeting him at all was either here in this court room or at a lunch, a restaurant, the other side of Levy's, or this side of Levy's, when Mr. Utley and Mr. Bell's former attorney and I were sitting at a table eating and Mr. Bell came through and spoke to us and sat at another table.

Q. With reference to December 4, 1945, which meeting took place first?

A. I think, if I am not mistaken, it was the one at the restaurant, when he came through and Mr. Utley spoke to him.

Q. And about when did that meeting take place as you [89] now recall?

A. Oh, I couldn't recall.

Q. Well, keeping in mind the date of December 4, 1945, was it a year before or a month before?

A. Oh, no, it was right in around the time of the first meeting of the creditors in this case.

(Testimony of Thomas S. Tobin)

Q. And did you at that time have any conversation with Mr. Bell of any nature or character at all?

A. No.

Q. You did not talk to Mr. Bell personally; is that right?

A. No, I believe I was just simply introduced and that was all there was to it. He went on to his own table and sat down and ate his lunch.

Q. When, if at all, did you have any conversation directly with Mr. Bell other than such casual talk as you may have had in the court room? A. Never.

Q. Pardon me, sir? A. Never.

Q. Did you ever have a conversation with Mr. Bell in the office of his attorney, Ernest Utley?

A. Not that I recall, no. I don't recall ever seeing him there. If I did, it was a casual meeting that didn't register.

Q. Did you have at any time any conversation with Mr. Bell concerning the subject matter of the obtaining or voting [90] of proofs of claim? A. Never.

Q. Did you ever have any conversation with Mr. Bell concerning the subject matter of the election of any certain Trustees— A. (Interrupting) No.

Q. (Continuing)—in this case? A. No.

Q. Did you ever have any conversation with Mr. Bell concerning the subject matter of the treatment of the bankrupt entity with reference to politics or religion or matters of that character?

A. No. In fact, I paid very little attention to the election of a Trustee in this case.

Q. Now, Mr. Tobin, did you ever have any conversation with Mr. Bell, the substance of which was somewhat

(Testimony of Thomas S. Tobin)

as follows: a question by Mr. Bell of you as to whether or not if claims were voted by the Board of Trade impartial Trustees would be elected who were not prejudiced from a religious standpoint or who had no connection with the Attorney General?

A. No, I can't recall ever having had any such conversation with him or anybody else. In fact, I didn't know that Trustees were going to be elected until the deadlock developed in this Court.

Q. Now, Mr. Tobin, did you have any conversation with [91] any one else connected with Mr. Bell or his organization concerning the voting of proofs of claims or the election of Trustees? A. No.

Q. You are associated with the legal firm of Craig & Weller, are you? A. I am.

Q. And the law firm of Craig & Weller does represent the Los Angeles Credit Managers Association, formerly known as the Los Angeles Wholesalers Board of Trade; isn't that correct? A. That's right.

Q. Mr. Tobin, prior to, oh, let us say, January 4, 1946, did you know that the Bankrupt or some one in the direction or control of the Bankrupt or Mr. Bell was recommending that the Los Angeles Board of Trade be given powers of attorney in fact to vote proofs of claim?

A. No, I never knew a thing about it or heard anything about it until the disqualification occurred after the election.

Q. Just to be more specific about my questions, Mr. Tobin, I want to direct your attention to certain exhibits heretofore referred to this afternoon in your absence. I show you a letter dated December 29, 1945, on the stationery of the Hotel Stratford—I think you have ex-

(Testimony of Thomas S. Tobin)

amined all these documents heretofore—a letter dated December 31, 1945, on [92] the stationery of the Hotel Stratford; a charge ticket on Wolcotts for proof of unsecured debt; a typed list of persons under a heading of “P36B” and a copy thereof; and a copy of a communication dated December 28, 1945. I ask you whether or not you personally knew anything about the matters covered by any of those documents.

A. I did not. I saw these two letters on the stationery of the Hotel Stratford dated December 29, 1945, when I came down here and examined the file for the purpose of preparing a petition for review. I had never seen the others you have shown me until just now.

Q. Now let me broaden my question. Do you know anything about the sending out of those communications, whether in writing or by telephone or word of mouth or otherwise?

A. I do not, nor did not until I saw these two letters here in the file.

Q. Do you know anything more about it than what is shown by those two letters? A. Not a thing.

Q. Did you have any conversation with Mr. Bell or with any one on behalf of Mr. Bell or his organization with reference to the sending out of the specific documents that you have examined or the subject matter of the contacting of creditors on behalf of the entity that they described as the L. A. Board of Trade or Los Angeles Board of Trade?

A. Mr. Gendel. I have practiced bankruptcy law for [93] twenty-five years; and I did not in any way solicit, condone, nor consent to the Bankrupt's soliciting any proofs of debt.

(Testimony of Thomas S. Tobin)

Q. Just for the record, Mr. Tobin, I want Mr. Clay, the reporter, to read back my question so that we can have a direct yes or no answer in the record.

(The reporter read the question, as follows: "Q. Did you have any conversation with Mr. Bell or with any one on behalf of Mr. Bell or his organization with reference to the sending out of the specific documents that you have examined or the subject matter of the contacting of creditors on behalf of the entity that they described as the L. A. Board of Trade or Los Angeles Board of Trade?")

A. No.

Q. Or with reference to any contact with reference to the obtaining of proofs of claim or the election of a Trustee by the organization known as The Los Angeles Credit Managers Association? A. No.

Q. Do you of your own knowledge know whether or not any one in connection with the entity formerly known as the Board of Trade, now known as The Los Angeles Credit Managers Association, had any contact with Mr. Bell or any one on his behalf with reference to the obtaining of any proofs of claim for voting purposes in this case? A. No, so far as I know, nobody did. [94]

Q. Did you make an effort to inquire from the organization itself, their employees, in connection with the review as to whether any one had any contact of any nature?

A. I didn't make any specific inquiry, but I know from the talk that went on over there about our disqualification that nobody seemed to know about having contacted Mr. Bell or his organization.

Q. All of the representatives of the former Board of Trade, that is, the Los Angeles Credit Managers Associa-

(Testimony of Thomas S. Tobin)

tion, were aware of the ruling of the Court and the appeal pending and so forth?

A. Yes, sir. In fact, the Secretary and Manager of the Los Angeles Credit Managers Association, Mr. Johnson, insisted that the appeal be taken.

Q. Now, Mr. Tobin, since January 3, 1945, have you had conferences of conversations with Mr. Bell or any one on behalf of Mr. Bell or his organization concerning the election of Trustees?

A. I talked with Mr. Bell and Mr. Utley out here at the elevator once, after coming out of Judge Mathes's court, in connection with some order that I believe Referee Brink was there that morning on and on which he had stated a position to the Court. I believe you and I were there. I talked to Mr. Bell casually over at the elevator, and I don't believe that related to the election of Trustees. It was after the disqualification occurred. That is the only [95] time that I have ever talked to Mr. Bell that I can recall since the first meeting of creditors.

Q. At that time was there any discussion about what your position might or might not be if the Trustees' petition for your employment was granted? A. No.

Q. My question also included speaking to any one else on behalf of Mr. Bell or his organization in connection with the Trustees or the solicitation of claims or the obtaining of proofs of claims.

A. All that was done upon our floor, that is, The Credit Managers Association, was that a letter was sent out—

Q. (Interrupting) No, no, Mr. Tobin. I am asking you whether you personally—

A. (Interrupting) Oh, no.

(Testimony of Thomas S. Tobin)

Q. (Continuing)—have had any conversation since January 3, 1946, not only with Mr. Bell but any one on his behalf or his organization's behalf in connection with this proceeding?

A. No, and the same would go before that time, too.

Q. I understand that. You have already testified to that.

The Referee: Is there anything else?

Mr. Gendel: Not unless your Honor wants to ask any questions. [96]

The Referee: Yes.

Examination

By the Referee:

Q. You had lunch with Mr. Utley and what other person at the time you first met Mr. Bell?

A. Who was the attorney?

Q. Mr. Parsons? A. Yes, Mr. Parsons.

Q. Did you meet accidentally at lunch, or was it an arranged lunch?

A. There wasn't any arrangement. I think that I was up at Mr. Utley's office talking to him about the reversal in the Hamaker case, Hamaker versus Heffron, and we went down the street. I met Russell Parsons up there. I was introduced to him, and we went downstairs. And Utley says, "Let us go in and eat here." We went in and ate; and while we were at the table, Mr. Bell came through.

Q. Was there any discussion about the Church case?

A. No, your Honor, I am satisfied that there wasn't.

Q. It was not mentioned?

(Testimony of Thomas S. Tobin)

A. I think the main topic as far as Parsons was concerned was the appeal to the Supreme Court of the United States on the sedition case.

Q. Was there any discussion at that lunch about the [97] election of Trustees?

A. I don't recall any. If there was, it didn't register.

Q. All right. A. I would be willing to say—
The Referee (Interrupting): Is there anything else?
Mr. Gendel: Yes, your Honor.

Direct Examination (Continued)

By Mr. Gendel:

Q. Well, will you give us at this time your best recollection as to whether or not there was any discussion concerning the obtaining of proofs of claim or the election of Trustees?

A. My best recollection would be that there was not. I never got the least bit excited over this Christ's Church case. I knew it was going to be a headache; and I never got the least bit excited over whether we got claims or not, to tell you the truth about it.

The Referee: Is there anything else?

Mr. Gendel: No, your Honor.

The Referee: All right, step down.

Are there any other witnesses?

Mr. Gendel: Well, I don't know whether Mr. Utley is going to come up or not. On the phone I talked to Mr. Weller, not Mr. Tobin, and suggested he contact Mr. Utley and have him up here. I did not check to find out whether he was [98] coming or not. If your Honor will permit a short recess, I can call on the phone.

The Referee: I shall give you that recess; but before I do that, I notice that the only persons in the court room with respect to this matter who are officially connected, or directly connected, are Mr. Gendel; Mr. Chichester, whom the Court knows to be at present associated with Mr. Gendel; and Mr. Tobin, who came in at the request of Mr. Gendel. I do not see any of the Trustees here. I should like to be informed as to whether this is a movement by the Trustees or by the attorneys. Is there any showing here that the Trustees or any of them requested anybody to have any further hearing in this matter?

Mr. Gendel: If your Honor will check the record, I think you will find a petition for a hearing signed on behalf of the Trustees by Mr. Sampsell.

The Referee: But who initiated it? Who started the thing? Did the attorneys prepare papers and submit them to the Trustees to sign, or did the Trustees instruct or ask the attorneys to do it?

Mr. Gendel: Your Honor, it would be a little difficult—

The Referee: I am frankly—Mr. Gendel and Mr. Tobin, I am amazed at the utter indifference on the part of the Trustees. After all is said and done, you gentlemen, with all due respect to you, although you are Interveners here, have no standing before this Court to come in here and sue [99] for the opportunity to do legal work. The profession may be somewhat commercialized; but it has not come to that point yet, that attor-

neys have the right to come into Bankruptcy Court and sue for the right to perform legal services. I can not understand the indifference of the Trustees. They are the ones whose rights have been violated if any wrong has been committed. I do not even see Mr. Weller here, of Craig & Weller.

Mr. Gendel: If your Honor is making what might appear in the record as a statement of fact, I think the record ought to show that there is apparently nothing that the Trustees can add by their testimony; and I believe the three of them are all busy on matters connected with Christ's Church of the Golden Rule. It is our understanding, Mr. Boteler having been present at the last hearing and having testified on behalf of the Trustees, that it is not necessary for a litigant to be present in court if his testimony is required, particularly if he is a busy man.

The Referee: That is granted. Mr. Boteler telephoned the Court ten minutes before our last hearing convened and said, "Do you want me there?"

The Referee said, "I do not want you there. You are the one that asked for it."

He said, "I am going to be rather busy; but I will try to make it."

Now I concede, Mr. Gendel, that it is not technically [100] necessary for the Trustees to be here; but if their rights have been violated and if they feel very deeply about it, that they have been deprived of the opportunity to be represented by counsel of their own

selection, I think they would be here. That is why I want an explanation as to who the real moving parties are here, whether it is the Trustees or whether it is you gentlemen who want to get a little legal business.

Mr. Gendel: Let us put it this way, your Honor, if I may answer your Honor's question; I presume it may be directed to me.

The Referee: Mr. Tobin can answer it, too, if he wants to.

Mr. Gendel: The Trustees as such have no particular personal connection with Messrs. Frank C. Weller, Thomas S. Tobin, nor Martin Gendel; nor will they be any better off financially if they happen to be the attorneys representing them than if Grainger & Hunt are the attorneys involved. So it is nothing in their pocket. The legal problem of whether or not the Court can make a ruling in chambers which by implication impugns or affects the reputation of the attorneys involved is something entirely different. In that they are deeply interested. As to the presentation of facts in a court hearing, the men are all busy men. They desire to have the matter heard and concluded. By this time I think they feel much as Messrs. Weller, Tobin, and Gendel feel, that the case has gone so far that it would be [101] a tremendous headache for a substitution to be involved. But they, nevertheless, feel that, because of the conduct of the Court in a Star Chamber session, the facts involved should be presented so that then the Court will have evidence that can be considered as it has been considered in these last hearings and, pursuant to that evidence, without considering the practical effect of a change of

attorneys, since that is not the issue before this Court, would then rule on the validity of the original petition. Now they are carrying the flag, we are doing the work. Your Honor can phrase your question in any way as to their interest in the matter. To them their interest, at this stage of the game, after approximately one year of administration, is primarily a legalistic one; and that is what are the rights of the Trustees and the counsel for whose employment they propose to ask? So that I do not think it is at all a fair question even to ask in a proceeding of this character, "Why aren't these men here?" What could they do here? The Court is fully familiar with what they could or could not testify to. Frankly I think that the Petitioners have done everything they could do to comply with the intimated desires of the Court as to testimony in addition to the affirmative testimony of Mr. Weller and Mr. Boteler as heretofore given. If your Honor wants the three gentlemen present, we shall be glad to have them here.

The Referee: I repeat I do not want anybody here. I am [102] simply drawing my own conclusions and my own inferences from the fact that they are not here.

Mr. Gendel: Well—

The Referee (Interrupting): All right, how long do you want to wait for Mr. Utley?

Mr. Gendel: I just want to call his office to see whether or not he can come here.

The Referee: All right, we shall take a short recess.
(Recess.)

The Referee: You may proceed.
Come forward, please, Mr. Utley.

ERNEST R. UTLEY,

having been first duly sworn, testified as follows.

The Referee: Be seated, please.

Your name is Ernest R. Utley?

The Witness: Yes, sir.

The Referee: Proceed.

Direct Examination

By Mr. Gendel:

Q. You are one of the attorneys for the Bankrupt Corporation, are you? A. Yes, sir.

Q. Now, Mr. Utley, do you recall Mr. Tobin's meeting Mr. Bell in your office at any time? [103]

A. If he ever met him there, I didn't know anything about it. I do not believe Mr. Tobin was ever in my office until about two or three months ago, that is, since I have been practicing law.

Q. Do you remember an occasion when Mr. Tobin was at your office and you introduced him to Russell Parsons, one of your associates counsel?

A. I think that was the time I had in mind two or three minutes ago.

Q. On that particular occasion did you have lunch with Mr. Tobin?

A. I don't think so. We might have, I don't know.

Q. Mr. Utley—

A. (Interrupting) I don't recall it if I did.

Q. Do you recall—

A. (Interrupting) I don't recall having lunch with him. I could have had lunch with him. Did I?

Q. Mr. Utley, do you recall having lunch with Mr. Tobin and Mr. Parsons in the latter part of 1945?

A. No.

(Testimony of Ernest R. Utley)

Q. Do you recall Mr. Bell's being introduced to Mr. Tobin by you or in your presence, whether it was at lunch or in your office or any other place?

A. Not Mr. Tobin. I have in mind another matter that you may have confused. Early in this case Mr. Bell and Mr. Parsons and I were eating lunch. Senator Weller came in and [104] came up to the table, started kidding me about my Church case. I introduced him to Mr. Bell, and he was slightly embarrassed because he had been kidding about the Church case. But that was Senator Weller, not Mr. Tobin.

Q. At that time was there any conversation with Senator Weller about the election of Trustees or proofs of claim or anything of that character?

A. That was not mentioned; just an introduction, a few friendly words passed back and forth. There was nothing about the Trustees.

Q. Was there anything about the case itself; was the case itself discussed at that time?

A. Well, Senator Weller came up; and he was kidding me about having a church case. I don't know just what he said, some passing remark. It was such that when he found out Mr. Bell was sitting there with me it rather embarrassed him a little bit. I introduced him to Mr. Bell, and he turned a little red in the face when I did.

Q. Did that about terminate the conversation?

A. Oh, a word or two of greeting, a laughing remark or two passed. I don't remember what it was now.

Q. On any occasion, Mr. Utley, were you present when either Mr. Bell, or any one on his behalf or on behalf of the Bankrupt Corporation, had any conversation with Mr. Tobin concerning the obtaining of proofs

(Testimony of Ernest R. Utley)

of claim or the voting for a Trustee or the election of a Trustee? [105]

A. No, I don't recall any such; I don't recall Mr. Tobin's ever being with Mr. Bell when I was with him before the election of the Trustees.

Q. Now do you know whether or not—

A. (Interrupting) They could have been together, but I don't know anything about it.

Q. Do you know whether or not Mr. Bell or any one on behalf of Mr. Bell or the Bankrupt Corporation had any conferences or conversations with either Mr. Tobin or Senator Weller or anybody connected with the Los Angeles Credit Managers Association, formerly known as The Board of Trade, concerning the subject matter of obtaining proofs of claim or the voting for the election of a Trustee?

A. Nothing to my knowledge. I might qualify that to this extent: Of course—you say anybody on behalf of Mr. Bell. Naturally I knew that the Board of Trade had some claims that they were going to vote. I didn't know just who they were going to vote for.

The Referee Q: How did you know it?

A. How did I know they had the claims?

Q. Yes.

A. Because I think Senator Weller told me that they had some claims.

Q. Then you did have some discussion with Senator Weller about the voting of claims for Trustees?

A. Not about the voting or claims. I merely knew they [106] had claims. I didn't know whom they were going to vote for. I assumed naturally they were going

(Testimony of Ernest R. Utley)

to vote for Mr. Sampsell just as a matter of past history, what they did.

The Referee: Go ahead.

Mr. Gendel: Will you tell us whether you or any one to your knowledge had any conversation with Senator Weller or any one connected with him concerning either the subject matter of obtaining proofs or the voting of any proofs of claim in connection with the election of a Trustee?

A. I never had any conversation with Mr. Weller nor any one else did, so far as I know, concerning how they were going to vote the claims.

Q. Did you have any conversation with Senator Weller or any one on his behalf concerning the obtaining of claims?

A. Not the obtaining. I just knew that they had some. I knew that the Board of Trade—I have always called it the Board of Trade—had some claims; and, until they got up here, I didn't whether they were going to vote for one or three Trustees. I assumed naturally from my past nine years of experience on the bench that if they voted them they would vote them for Mr. Sampsell. That has been their practice all those years.

Q. You said you talked to Senator Weller on an occasion about the fact that they had some proofs of claim. What was that occasion?

A. I don't—I don't even remember where it was or when [107] it happened; but I just asked Senator Weller if they had claims in the case, I think; and he said they did have.

(Testimony of Ernest R. Utley)

Q. Was that about the substance of it?

A. Just the fact that they had some claims.

Q. Do you know whether or not the Bankrupt or Mr. Bell or anybody on behalf of Mr. Bell or the Bankrupt furnished the so-called Board of Trade or Senator Weller or Mr. Tobin with a list of creditors?

A. Not that I know anything about.

Mr. Gendel: May I have the two Certificates, please, your Honor?

(The Court hands a paper to counsel.)

Mr. Gendel Q: I do not know, Mr. Utley, whether you are familiar with the Court's Certificates on Review or the exhibits, are you? A. No, I am not.

Q. Well, I want to show you the documents we refer to, one dated December 29, 1945, on what purports to be the Hotel Stratford stationery. If you care to, go ahead and read that. (Handing a paper to the witness)

A. Is that all you want me to read?

Q. Well, here is what appears to be a similar type of letter dated December 31, 1945, also on Hotel Stratford stationery. (Handing a paper to the witness)

A. Yes.

Q. Then in the Supplement there is a form of a proof of [108] unsecured debt—let me see, yes, a printed form. There is a charge ticket to Wolcott's for blanks of proof of unsecured debt and letter of attorney. There is an original and a copy of a memorandum entitled "P36-B," and what purports to be a carbon copy of a communication dated December 28, 1945, starting with the words, "Please check with all of our Oregon cred-

(Testimony of Ernest R. Utley)

itors." Do you know anything about the sending of any of those documents or the obtaining of any of those documents?

A. Nothing whatever. I had told some one in connection with the Church case—I don't know whether it was Mr. Bell or Miss Knapp or Mrs. Huff—that creditors should be notified to file claims; if they knew any creditors they should notify them. But I never told them to send out any letters, never told them to furnish any creditors with any blanks.

Q. Mr. Utley, you will notice that the two letters first referred to, that dated December 29th and that dated December 31, 1945, refer to a L. A. Board of Trade at 704 South Spring Street?

A. This one says "Los Angeles Board of Trade."

Q. Pardon me, the Los Angeles Board of Trade I believe is correct. Do you know where Mr. Bell obtained the information for that communication, Mr. Bell or any one connected with the organization?

A. I don't have the slightest idea. [109]

The Referee: Well, Mr. Bell has testified that you told him about the Board of Trade, Mr. Utley.

The Witness: I told him that the Board of Trade would undoubtedly be voting claims.

The Referee Q: What Board of Trade did you have in mind when you told him that?

A. I had in mind the one on 7th Street.

Q. The one represented customarily by Craig & Weller?

A. Yes. I told him that because I knew the Board of Trade in a case of that kind would have claims to vote.

(Testimony of Ernest R. Utley)

Q. You told him that the Board of Trade usually voted for Paul W. Sampsell, did you not? A. Yes.

Q. You told him that Paul W. Sampsell was a good man?

A. I also told him Paul W. Sampsell, Boteler, Goggin—I named over Eddie Lynch, I named over George Gardner. I think we discussed practically every Trustee that had acted in any of the courts. And I told him that they were all good men, competent, capable men. I told him, however, that I felt that in a case of this size probably Mr. Boteler or Mr. Sampsell or Mr. Goggin were better equipped to handle it.

The Referee: Go ahead.

The Witness: And I told him he would find them all good, conscientious, capable men.

Mr. Gendel Q: Mr. Utley, when was it first called to [110] your attention, if at all, that Mr. Bell or some one on behalf of Mr. Bell or the Bankrupt organization was recommending that if a particular creditor did not have his own attorney representation was being furnished by Raphael Dechter or the Los Angeles Board of Trade in connection with those letters?

The Witness: Will you read that question?

(The reporter read the question.)

I never knew that reference was being made to the Board of Trade until I heard later about these letters' being in the file here.

Q. You mean after the Court had ruled on the disqualification; is that right? A. Yes.

Q. To your knowledge—

(Testimony of Ernest R. Utley)

A. (Interrupting) I didn't understand that Mr. Bell was necessarily opposed to the Board of Trade; but I didn't know he was out boosting for them.

Q. All right, sir. Now to your knowledge did Mr. Bell or any one on behalf of Mr. Bell and/or the Bankrupt Corporation, to make the question all inclusive, have any conversations with any one connected with Craig & Weller; Thomas Tobin; Martin Gendel; the Los Angeles Credit Managers Association, formerly known as the Board of Trade; or any one connected with any of those persons or organizations concerning the controlling of the election of the [111] Trustees or the obtaining of proofs of claim?

The Witness: Read that question.

(The reporter read the question, as follows: "Q. All right, sir. Now to your knowledge did Mr. Bell or any one on behalf of Mr. Bell and/or the Bankrupt Corporation, to make the question all inclusive, have any conversations with any one connected with Craig & Weller; Thomas Tobin; Martin Gendel; the Los Angeles Credit Managers Association, formerly known as the Board of Trade; or any one connected with any of those persons or organizations concerning the controlling of the election of the Trustees or the obtaining of proofs of claim?") A. Not to my knowledge.

Mr. Gendel: That is all, your Honor, unless you care to ask Mr. Utley any questions.

The Referee: No, I have no further questions.

Mr. Gendel: No further questions, your Honor.

The Referee: Is there any other evidence?

Mr. Gendel: No, your Honor, the Trustees rest.

(Testimony of Ernest R. Utley)

The Referee: All right, do you want to be heard?

Mr. Utley: May I be excused, your Honor?

The Referee: Surely.

(Mr. Utley leaves.)

Mr. Gendel: Well, it is rather a difficult proposition, your Honor, to be heard partially; and yet I feel that practically anything that could be said on this matter has [112] been said many times. The only thing that I would like to point out to the Court is that if the Trustees are going to be denied the attorneys of their choice, as is indicated by our Ninth Circuit Court of Appeals, that right can be exercised only in apparently the rarest cases or, let us say, in cases only where good cause appears. I think, as this Court has indicated in the past, that there is a field of discretion involved in a Referee's right to deny or grant a petition for the employment of counsel. Our Circuit Court has indicated that there should be a judicial hearing in connection with that granting or denying if that problem arises. We have now had what the Trustees consider a judicial hearing. So we would have to pass on to the second phase of the opinion of the Circuit Court of Appeals, which cites the two cases setting forth the conditions under which a petition by a Trustee can be denied. And I would like to point out once again that the Court has quoted the language stating that only in the rarest cases should the petition of the Trustees be denied. Apparently the activity of the Bankrupt, through Mr. Bell and apparently other persons associated with the Bankrupt Corporation, was an uncommunicated activity as far as Messrs. Craig & Weller and Thomas

Tobin are concerned or even the Los Angeles Credit Managers Association.

The Referee: Mr. Bell has testified he talked to Mr. Tobin. [113]

Mr. Tobin: Yes, I have heard his testimony, your Honor.

The Referee: He was your witness.

Mr. Gendel: And taking that testimony by its four corners and stretching it as far as it could possibly be stretched, in my humble opinion there is nothing there that indicates that the obtaining of proofs of claim or the election of Trustees by any one Mr. Tobin was associated with would be a controlled proceeding in the sense that the cases have heretofore required in denying the allowance of attorneys' fees or the employment of counsel by Trustees. As a matter of fact, Mr. Tobin recalls no such conversation, no such conversation as is indicated by Mr. Bell. Mr. Bell has predicted his recollection of it on an introduction by Mr. Utley; and Mr. Utley not only denies the existence of the conversation but also the introduction.

Now taking into consideration the fact that both Mr. Tobin and Mr. Utley are officers of this court and considering your Honor's experience with Mr. Bell as a witness over the past year—

The Referee (Interrupting): What do you mean by that?

Mr. Gendel: Your Honor has had occasion to see Mr. Bell in court testifying. I don't know whether that has occurred before as far as Mr. Utley and Mr. Tobin—

The Referee (Interrupting): I do not think that point is well taken, Mr. Gendel. I do not have any doubt of

Mr. [114] Bell's veracity—I mean as a general, consistent thing. I take each proceeding by itself. And when every witness has had his say, I then make my findings as to what the facts are. Those facts may directly or indirectly attribute to Mr. Bell the giving of false testimony; but I take every proceeding by itself. Mr. Bell stands here just the same as any other witness.

Mr. Gendel: I have reference to—

The Referee (Interrupting): And in any event you called him.

Mr. Gendel: Certainly, at the indication of the Court.

The Referee: I want no more reference, Mr. Gendel, to the indication of the Court. You are here for a hearing. You have been given an opportunity for a hearing. The Court has not required you to produce anybody.

Mr. Gendel: No, but the Court indicated at the last hearing at which evidence was introduced that unless—and this, if I recall correctly, from the bench—that unless evidence was introduced as to why the letters were sent out the Court was going to reaffirm the denial of the Petition for Employment. So that of course left no alternative to the Petitioners.

The Referee: I did not tell you whom you should call.

Mr. Gendel: Well, Judge—

The Referee (Interrupting): Go ahead with your argument.

Mr. Gendel: This matter is to me too serious a matter [115] to quibble on words. You did not mention Mr. Bell or anybody specifically. You merely said you wanted to know why the letters were sent out. The conclusion as to whom you wanted to hear from was rather inescapable. The record will speak for itself on that.

Mr. Bell has testified on apparently what the Court was interested in. If your Honor cares to believe Mr. Bell and not to follow the general basic rule of law, which is that a Court has a right to disbelieve a witness in one matter, having found he has no basis for belief in other matters—this is a continuous proceeding, a single case—if the Court decides to disregard that basic rule of law, nevertheless, taking Mr. Bell's testimony, I think he made himself rather clear that if he had a conversation with Mr. Tobin that conversation was predicated on a statement of his position, that he wanted a Trustee who was not political minded or connected with the Attorney General, not prejudiced from a religious standpoint, and who would give an expeditious administration to the estate. I think that is just about as far as you can stretch his testimony. He denied having discussed in any way the control of the election of a Trustee or the conduct of the Trustee after election; said, if I recall correctly, your Honor, that he did not even consider that as a problem because he did not anticipate what ultimately developed in the administration of this estate. Now that is the extent of Mr. Bell's testimony. He could not recall Mr. Tobin; so [116] he described the gentleman—responded that he did not remember what was said except that he felt it must have been to his satisfaction as far as he was concerned.

Now what does that mean? Does that mean that some one was going to be elected or that attorneys were going to be employed by that some one who would be subject to disqualification because of this conversation? I do not think so, your Honor. I think that if your Honor is going to affirm the disqualification, it would have to be on the basis that if a Bankrupt, directly or indirectly,

at any time, should recommend the placement of claims, even though that recommendation was not effective (I do not think there is anything in the record to indicate that these forms that are in the Supplemental Certificate were ever voted at the election of Trustees), then that indication would disqualify the proposed persons elected as Trustees or to be nominated, let us say, as Trustees or any one to be appointed by those proposed persons.

The thought I have in mind is this, without going into the legal authorities involved because I feel that your Honor, having read the ruling in the Circuit Court of Appeals, is familiar with those basic authorities, that you would have first the basic problem was there a controlled proceeding in the sense that the Bankrupt or any one on the Bankrupt's behalf was able to direct or participate in the election of the Trustees? I think then your Honor's problem [117] would be the fact that these recommendations and the testimony of Mr. Bell and the exhibits that are now before the Court indicate clearly that if the desires of the Bankrupt were carried out, the Los Angeles Board of Trade, at 704 South Spring Street, would have received claims in a matter which they knew nothing about. And it would be their names that would be named in the proof of claim. I think that that basic, beginning point, your Honor, can not be neglected in building up the conclusion that has to be reached by this Court. In other words, if there was a scheme and a device and a plan in the mind of the Bankrupt which in any way could be connected with the Trustee or counsel proposed by the Trustee, it should be that type of a scheme which, to some extent at least, was attempted to be carried out. And the point I am trying to make in connection with that factual situation is that, if Mr.

Bell had been effective in his desire, he would have had those claims going to an organization which did not exist. And if your Honor is taking into consideration his intentions or his desires, transmitted by telephone or personally, prior to the mailing of the letters, which we have exhibits of in this court in your Honor's Certificate and Supplementary Certificate, then your Honor must conclude that it would be the Los Angeles Board of Trade that would have received those proofs of claim. And there is no evidence whatsoever that the Los Angeles Board of Trade voted claims in this proceeding. So [118] I think you have to start from that basic premise first, that nothing was accomplished by the Bankrupt by assuming that the Bankrupt, through Mr. Bell, had a desire to attempt to control the election of Trustees.

The second problem is that those claims, if they had been in existence, and of course the record indicates they were not, would have been voted for men who obviously, apparently, knew nothing about the so-called participation by the Bankrupt, Messrs. McKee, Boteler, and Sampsell. They are not disqualified, because the Court recognizes their record as officers of the court and Trustees and Receivers in years past—except for Mr. McKee, who came highly recommended to the Court apparently. They would be the ones disqualified, because they are the ones for whom the claims would have been voted. Then your Honor would have to overcome that particular hurdle and get over to the attorneys presented by the Trustees in their Petition for Employment.

Now I do not think that you can stretch any intention on the part of Mr. Bell or the Bankrupt Corporation to control the Trustees or counsel for the Trustees by the communications which had been forwarded by the

organization. No. 1, they were ineffective; No. 2, they did not occur. I do not think, then, that this Court could exercise its discretion and say, "There was enough evidence before me which, if admissible evidence, would justify my finding that the Bankrupt could control the Trustees or counsel for the Trustees [119] through his participation in the attempt to obtain claims and to vote them for the Trustees."

I realize that your Honor has indicated that the disqualification order was not directed at the particular attorneys involved. Nevertheless, no matter what is said in the written record, the ultimate result of the disqualification is to indicate, by implication or inference, that the sworn affidavit or verification was not sufficient to overcome the feeling of the Court that there was some control connection. Now the expression of your Honor in the Order of January 2, 1946, that because of the circumstances existing there might be a suspicion cast some day by some one on the administration of the Bankruptcy Court to the effect that Mr. Bell or some one on behalf of the Bankrupt Corporation was attempting to control or had controlled the Trustees or the attorneys for the Trustees, is a suspicion that can not be based on evidentiary matters introduced in this proceeding, because there was nothing, in my opinion, to justify that suspicion. Now your Honor may still have that suspicion that some day somebody might complain. But I think the Circuit Court of Appeals has indicated without question that as far as the Circuit Court in this District is concerned the right of the Trustees to select their own counsel need not, or can not—let us put it that way—be predicated on mere suspicion; that there has to be something much stronger than that.

And of course the position we have [120] taken on the review of the original orders was that the Trustees have a basic right to the selection of their counsel unless there is judicial evidence, pursuant to a judicial hearing, introduced that this Court does not have the right to exercise its discretion.

The Referee: Well, Mr. Gendel, I go back again to the utter indifference of the Trustees in this proceeding. I can not bring myself to feel that they are in any way aggrieved by any order the Court has heretofore made depriving them of their right to certain attorneys as their counsel. That leaves the Court with only one impression, that the sole desire of the Trustees here is to repay these attorneys for service the attorneys rendered to the Trustees in nominating them for the office of Trustee. In other words, the Trustees stand before the Court here and say, "You can not deprive us of the right of distributing patronage. We have that right, we are the Trustees. Because we are the Trustees, we ought to have the right to pass out this position of attorney for the Trustees."

Now we should all, I think, be rather shocked if the Trustees stood before this Court and said, "We are very grateful to Craig & Weller and Martin Gendel and Mr. Tobin for electing us Trustees, and therefore we are paying these gentlemen the sum of \$5,000." I do not see at the moment, without having an opportunity to study it, why perhaps it might not be wrong. I do not know whether it would be [121] criminal or not, I do not know whether it would be unethical or not; but I think we should all be rather instinctively shocked by it. And yet what is the distribution of patronage by Trustees except the payment for something that was done for

them, the Trustees? So, Mr. Gendel, one is not impressed in this situation with the right of the Trustees to pick their own counsel. If Mr. Sampsell were here and Mr. Boteler were here and Mr. McKee were here,—if any one of them were here and if he were to say, “Your Honor, I have a particular confidence in Mr. Weller or in Mr. Gendel or in Mr. Tobin; I have been represented by these gentlemen or by one or more of them all down through the years, and I just do not feel safe with anybody else”—now if that were the situation, then the Court certainly would be impressed with the right of any fiduciary, Trustee in Bankruptcy or otherwise, in the discharge of complicated duties and in the performance of responsibilities that are very difficult—the Court would be impressed with the right of the fiduciary to select counsel that he had confidence in. But all of that is absent in this case. Here it seems it is just a cold blooded proposition: “We want to distribute the patronage that goes with the office.”

However, it is true, as Mr. Gendel points out, that the Court may not deny the right of Trustees to employ counsel of their own selection without a good reason. I think it comes down to the general order relating to the employment [122] of counsel or officers of the Bankruptcy Court. The Court must make a finding that the counsel proposed do not represent any adverse interests, and that their employment is for the best interests of the estate. So the one, the first is a clearcut question or finding of fact: Do these attorneys represent any

adverse interest? There is no possible discretion there. That is purely a finding of fact. The other phase of it, though it is ultimately a finding of fact, may involve some discretion: Is the employment of the proposed attorneys in the best interests of the estate?

Now, Mr. Gendel, this is an important matter for everybody. I ruled on it once. But the matter is before me again. Evidence has been offered here. I deem it my duty to give this the most thorough consideration; and so that I may not have overlooked anything, I shall ask Mr. Clay, the reporter, to furnish me with a transcript of this afternoon's proceedings so that I may study it over. I think the testimony at the previous hearing is rather clear in our minds.

Mr. Gendel: Your Honor, I take this matter, as the Court has indicated it does, in sincerity and seriousness. I think it is more or less of a milestone in at least local bankruptcy administration. I would like to offer at this time, if the Court does not want to penalize the estate with the expense, to provide the Court with a transcript of the [123] first hearing also so that the Court may have a complete picture of the testimony in line with the authorities that have been submitted to the Court and the arguments that have been presented. Frankly, I am trying to refrain from arguing as if before a jury, because I know that your Honor is considering this matter with all the judicial fairness that your Honor can give it. I think, as I have indicated in the arguments presented to the Appellate Court, that perhaps your Honor

got off onto the wrong foot legally; and I am hoping to get your Honor onto the right foot. I do not want to allow any possibility of any factual forgetfulness or any of the human element to get into it, because we do not enjoy going back up the ladder again.

The Referee: You may do that.

Mr. Gendel: I shall do that, and I shall want a copy provided at the same time of the transcript your Honor has ordered.

The Referee: Very well.

The matter is submitted.

[Endorsed]. Filed Jan. 21, 1947. [124]

[Endorsed]: No. 11735. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Christ's Church of the Golden Rule, a non-profit California corporation, Bankrupt, Paul W. Sampsell, L. Boteler and McIntyre Faries, as successor to Stewart McKee, the duly qualified and acting trustees in bankruptcy of the estate of Christ's Church of the Golden Rule, a non-profit California corporation, bankrupt and Frank C. Weller, Thomas S. Tobin and Martin Gendel, Appellants. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed September 23, 1947.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit.

In the United States Circuit Court of Appeals
in and for the Ninth Circuit

No. 11735

In the Matter of

CHRIST CHURCH OF THE GOLDEN RULE,
a non-profit California Corporation,

Bankrupt.

CONCISE STATEMENT ON APPEAL AND DESIGNATION OF RECORD NECESSARY FOR CONSIDERATION THEREOF AND TO BE PRINTED.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth *District*:

For their concise statement of points on appeal on which the appellants intend to rely, the appellants, and each of them, adopt the statement of points filed with the Clerk of the District Court of the United States, Southern District of California, Central Division.

The appellants do hereby designate and adopt the statement of points as their assignments of errors.

The appellants do hereby designate the entire certified transcript as the record necessary for consideration thereof and to be printed.

Dated this 1st day of October, 1947.

FRANK C. WELLER

THOMAS S. TOBIN and

MARTIN GENDEL

By Martin Gendel

Attorneys for Appellants

[Endorsed]: Filed Oct. 3, 1947. Paul P. O'Brien,
Clerk.

